

this fully meets the requirement of the statute that the address be shown *therein*.

The reason for the existence of the address on the petition as of the date of signing is evident for unquestionably the Legislature desired the petition to show on its face that at the time of signing the person was a resident at a given place shown in the petition. This is accomplished whether the address is written by the signer of the petition or whether it has previously been placed there for the signer's convenience.

I am therefore of the opinion a petition in the form shown by your letter meets the requirements of the statute when signed and dated.

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OFFICIAL OPINION NO. 2

January 3, 1962

Hon. Dorothy Gardner  
Auditor of State  
238 State House  
Indianapolis 4, Indiana

Dear Mrs. Gardner :

This will acknowledge receipt of your letter of December 14, 1961, wherein you request my Official Opinion with respect to the payment of salary to a legislator.

Your letter states in part as follows :

"It has come to our attention that a legislator has moved from his district and outside the State of Indiana. Article 4, Section 7 of the Constitution of Indiana establishes qualifications for members of the General Assembly 'at the time of his election.' Chapter 65, Section 1 of the Acts of 1955 provides for date and amount of salary to be paid to members of the General Assembly. Chapter 245 of the Acts of 1957 amends Chapter 65 of the Acts of 1955 by stating :

[Here follows your quotation of Section 1 of the Acts of 1957, Ch. 245, *supra*.]

"We are unable to find any law which appears to cover this particular situation. We, therefore, respect-

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fully submit the following questions for your consideration and official opinion:

- “1. If a legislator moves his domicile from his district which he was elected to represent, can the Auditor of State legally continue to pay his salary to him as a legislator?”
- “2. If your answer to Question 1 is affirmative, does it apply equally in case the legislator moves his domicile outside the State of Indiana?”

The present salary for members of the General Assembly is provided for in the Acts of 1955, Ch. 65, Sec. 1, as found in Burns' (1961 Supp.), Section 34-201f, which reads as follows:

“From and after November 7, 1956, the salary of the members of the general assembly shall be eighteen hundred dollars [\$1,800] annually. The salary shall be paid in the following manner:

“(1) In odd-numbered years, nine hundred dollars [\$900] shall be paid on the fifteenth [15th] day of January, and nine hundred dollars [\$900] shall be paid on the fifteenth [15th] day of February; and

“(2) In even-numbered years, four hundred fifty dollars [\$450] shall be paid on January 15th, April 15th, July 15th and October 15th.”

In order to be eligible for the salary prescribed by Burns' 34-201f, *supra*, a legislator must meet the qualifications set forth in the Indiana Constitution, Art. 4, Sec. 7, which reads as follows:

“No person shall be a Senator or a Representative who, at the time of his election, is not a citizen of the United States; nor any one who has not been for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district, whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.”

The fact that the legislator under consideration herein has apparently moved out of his county and district as well as the State of Indiana may well raise a question with respect to his continuing qualification to serve as a member of the Indiana General Assembly.

It is not within the province of the Attorney General of the State of Indiana to determine, in this Opinion or otherwise, the present qualification or eligibility of members of the General Assembly who have moved their domicile from the district and/or out of the State of Indiana. Based upon the Indiana Constitution, Art. 4, Sec. 10, the Indiana Supreme Court has repeatedly held that the General Assembly itself is the sole judge of the qualifications of its members.

State *ex rel.* Gramelspacher v. Martin Circuit Court  
*et al.* (1952), 231 Ind. 114, 197 N. E. (2d) 666;

Lucas v. McAfee *et al.* (1940), 217 Ind. 534, 29 N. E.  
(2d) 403;

1947 O. A. G., page 142, No. 30.

This Opinion is not intended, therefore, to determine whether or not the subject legislator is still a qualified member of the Indiana General Assembly, but is restricted to the question of salary that can be legally paid to a legislator who moves his domicile outside the State of Indiana or to another district within the state.

Prior to the passage of the present salary law for members of the General Assembly, Burns' 34-201f, *supra*, the salary for the several legislators was controlled by the Acts of 1943, Ch. 177, Sec. 3, as found in Burns' (1949 Repl.), Section 34-201a. Under this earlier salary law, questions frequently arose as to the entitlement to receive the \$1,200.00 annual salary subsequent to death or resignation of the legislator. In 1953 O. A. G., page 84, No. 18, the Attorney General was asked to determine the status of the unpaid portion of the salary for a deceased legislator. The Attorney General, relying upon the decision in State *ex rel.* Black *et al.* v. Burch (1948), 226 Ind. 445, 489, 80 N. E. (2d) 294, 81 N. E. (2d) 850, stated that any salary which was unearned and unpaid at the time of the legislator's death could not be paid to the legislator's estate

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or to his heirs. The Opinion in 1953 O. A. G., No. 18, *supra*, was predicated upon the theory that the salary, as then provided for in Burns' 34-201a, *supra*, was based upon continuing services by the legislator after the conclusion of the sixty-one (61) day session of the General Assembly. Therefore, under this earlier Opinion, upon the death or the resignation of a legislator, his rights to the continued installments of the annual salary were terminated.

In 1957, the General Assembly added Section 1a to Burns' 34-201f, *supra* (the present salary law). Acts of 1957, Ch. 245, Sec. 1, as found in Burns' (1961 Supp.), Section 34-201i, reads as follows:

*"The general assembly hereby declares that the salary provided for in section 1 of this act is solely for the purpose of compensating the members of the general assembly for services rendered during the regular sixty-one [61] day session of the general assembly and said salary shall be in full for their attendance at the regular session of the general assembly and the members shall receive no additional salary for attendance at any special session of the general assembly."* (Our emphasis)

Burns' 34-201i, *supra*, quoted above, declares the intent of the Legislature in clear and in unequivocal language. In construing a statute such as Burns' 34-201i, *supra*, the Legislature has prescribed the following rule in 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

The plain and ordinary meaning of the emphasized portions of Burns' 34-201i, *supra*, is that the General Assembly intended the salary be paid to the legislators for services actually ren-

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dered during the sixty-one (61) day session of the General Assembly.

Thus, the annual salary of the members of the Legislature is no longer based upon services of the several legislators continuing during the entire term for which they were elected, but is based "solely" upon the services which they rendered during the regular sixty-one (61) day session of the General Assembly. In this instance, the payment of salary in installments does not detract from the fact that the services have already been rendered in full. Therefore, a legislator who attended the sixty-one (61) day session of the 92nd Session of the Indiana General Assembly in 1961 would be entitled to the payment provided for in Burns' 34-201f, *supra*, even though he may have, subsequent to such session, removed himself from his district and outside the State of Indiana.

In answer to your first question it is my opinion that the Auditor of State can legally continue to pay the balance of a legislator's salary even though he moves his domicile from his district.

The answer to question No. 1 is equally applicable to a legislator who moves his domicile outside the State of Indiana.

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OFFICIAL OPINION NO. 3

January 3, 1962

Hon. Anna Maloney  
State Representative  
131 East 5th Avenue  
Gary, Indiana

Dear Representative Maloney:

Your letter of December 11, 1961, has been received and reads as follows:

"I would like an *official* opinion regarding teachers' sick leave. The law states that the school board allow sick leave for teachers up to a total of 90 days.

"Is 90 days the maximum number of accumulated sick leave days that may be allowed—or may the board allow *more* than 90 days?"