

820.

TOWNSHIP TRUSTEE—WHERE HE REMOVES FROM TOWNSHIP—QUERY. VACANCY, REMOVAL TEMPORARY OR PERMANENT—QUESTION OF FACT—CIRCUMSTANCES DETERMINE TRUE INTENTION.

*SYLLABUS:*

*In the case of a removal from the township of a person holding the office of trustee in said township, the question of whether or not such office shall be declared vacant depends entirely upon whether such removal was temporary or permanent.*

*Whether or not such removal constitutes a change of residence is a question of fact which may only be determined by all the circumstances surrounding the removal of such trustee, and from which circumstances the true intention of such trustee must be ascertained.*

COLUMBUS, OHIO, June 28, 1939.

HON. GLENN R. IMMEL, *Prosecuting Attorney, Champaign County, Urbana, Ohio.*

DEAR SIR: I am in receipt of your letter which reads as follows:

“A certain trustee of Urbana Township has removed therefrom. He has rented a farm for the period of a year in Mad River Township. He has abandoned his former residence in Urbana Township and has no real estate or other property in Urbana Township. This trustee says that he intends to return to Urbana Township at the expiration of his rental contract (one year) in Mad River Township. In other words, he says that his removal from the Township is temporary, that he has not changed nor has he intended to change his residence.

In the Opinions of the Attorney General for 1924, page 525, the Attorney General held in construing Section 3261, the changing of residence from one township to another by a township trustee created a vacancy in that office.

Will you please give me your opinion as to whether or not this trustee has changed his residence and consequently whether or not said office is vacant.”

Township trustees, under the provisions of Section 3268, General Code, are elective officers. Section 4 of Article XV of the Constitution of Ohio, provides that no person shall be elected to any office in this State unless possessed of the qualifications of an elector.

The qualifications of an elector are contained in Section 1 of Article

V of the Constitution of Ohio, and Sections 4785-29 to 4785-33, of the General Code, inclusive. With respect to the residence of an elector, it is stated in Section 4785-31, General Code, as follows:

“ \* \* \* (a) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(b) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(c) A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode. \* \* \* ”

From the facts set forth in your communication, it is impossible for me to determine whether the removal in question is permanent or temporary. That determination resolves itself into purely a question of fact. If the trustee in question has a bona fide intention of returning to the township as you state in your letter he declares that he has, the provisions of Section 4785-31, supra, would be applicable and such trustee could then of course continue to hold office. On the other hand, if said trustee moved from the township, with no present intention of returning thereto, and with an intention to remain and establish a residence in the township to which he moved, then, obviously he could no longer hold office as trustee and such office should be declared vacant.

The question of change of residence of a township trustee was discussed by the then Attorney General in Opinions of the Attorney General for 1924, page 525. The second branch of the syllabus of that opinion reads as follows:

“Whether or not there has been such a change of residence is a question of fact to be determined by ascertaining the intent of such person. If he removes with the purpose of establishing a fixed habitation elsewhere and does not intend to return to his former home, a change of residence is effected; or, in the event that after a temporary removal he should decide to permanently remain away from his original habitation, this would likewise constitute a change of residence. Circumstances surrounding the acts of such a party may be considered for the purpose of determining what his real intentions are.”

From the above it would therefore appear that whether or not there has been such a change of residence so as to disqualify the township trustee from holding office is a question of fact which may only be determined

by all the circumstances surrounding the removal of such trustee from the township and from which the true intention of such trustee may be ascertained.

Therefore, in the instant case you are advised that it is my opinion that if it is ascertained that the trustee in question has a bona fide intention of returning to the township in which he is serving as trustee then and in that event, he may continue to hold such office during the time of his physical absence from such township.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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STATE BANK—FUNDS—MAY INVEST IN “BRIDGE REVENUE BONDS” ONLY WITH APPROVAL, SUPERINTENDENT OF BANKS—MAY INVEST WITHOUT SUCH APPROVAL IN BONDS OR OTHER OBLIGATIONS WITHIN PURVIEW OF SECTIONS 1078-61, 2332-7, 5240-4 AND 7923-1 G. C., I. E., HOUSING AUTHORITY BONDS, PUBLIC INSTITUTIONAL BUILDING AUTHORITY BONDS, ARMORY BUILDING AUTHORITY BONDS, UNIVERSITY DORMITORY OBLIGATIONS.

*SYLLABUS:*

1. *By the express terms of Section 1084-10, General Code, as amended in Amended Senate Bill No. 288, 93rd General Assembly, a state bank may invest its funds in “Bridge Revenue Bonds” issued under authority of said section, only with approval of the superintendent of banks.*

2. *A state bank may invest its funds in the kinds of bonds or other obligations referred to in Section 1078-61, General Code (Housing Authority Bonds); Section 2332-7, General Code (Public Institutional Building Authority Bonds); Section 5240-4, General Code (Armory Building Authority Bonds), or Section 7923-1, General Code (University Dormitory Obligations), without the approval of the superintendent of banks.*

COLUMBUS, OHIO, June 28, 1939.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: I have your letter requesting my opinion as to the power and authority of a state bank to invest its funds in the several kinds of bonds and obligations enumerated in such letter without first obtaining the approval of the Superintendent of Banks. Your letter reads as follows: