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## TOWNSHIP TRUSTEES—WHAT CONSTITUTES A CHANGE OF RESIDENCE IS QUESTION OF FACT.

## SYLLABUS:

(1) *Upon a township trustee changing his residence from the township in which he was elected to another, a vacancy in such office is created, to be filled in the manner provided by section 3261.*

(2) *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.*

COLUMBUS, OHIO, September 25, 1924.

HON. WAYNE L. ELKINS, *Prosecuting Attorney, Ironton, Ohio.*

Dear Sir:—

In your recent communication you request my opinion as follows:

“The township trustees of Perry Township in this county have requested an opinion as to whether or not a vacancy is created when a man who is serving as a township trustee moves with his family into another township when all circumstances point to the fact that he has moved permanently with no definite time specified when he is to return.

It is my opinion that there is a vacancy created, and the other two members should pass a resolution declaring his office vacant and appoint a member to take his place. And I refer you to Sections 3261 and 3262 of the General Code. I have given this as my opinion, but the Board requested me to submit the matter to you for your opinion.”

Section 3261, to which you refer, relates to the filling of a vacancy in a township office other than trustees, and inasmuch as your question is in reference to a trustee, the provision of such section will not apply. However, section 3262, which relates to the appointment to fill a vacancy in the office of trustee, provides:

“When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint a suitable person or persons, having the qualifications of electors in the township to fill such vacancy or vacancies for the unexpired term.”

When there is a vacancy, of course, under said section it becomes the duty of the Justices of the Peace of such township holding the oldest commission to fill such vacancy, and of course the real question in your case is whether a vacancy has occurred.

Section 4 of Article XV of the Constitution provides that no person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector. It has frequently been held that if the status of an official is changed after his election or appointment so that he no longer is an elector for the district in which he was appointed or elected the office is forfeited. It will be observed that one of the qualifications of an elector is that he reside in the district for which he is elected, and a change of his residence in this respect would forfeit the office, thereby creating a vacancy.

This brings us to the real question in your case, as to what constitutes a change of residence. It necessarily is a question of fact as to when one has legally changed his residence. If he has removed from one township to another for temporary purposes this, of course, would not constitute a change of residence. On the other hand, if he has removed from the township and established a home in another, and it is his intention to reside there permanently, this would constitute a change of residence.

However, it may be stated that it is not necessarily the length of time that one has been absent from the township in which he lives, but rather it is the intention of the party at the time of his leaving and his intention during the time in which he is away.

The case of *State ex rel. Webber vs. Hathway*, 22 O. C. C. (N. S.) 314, is an interesting case upon the subject before us. A part of the syllabus in this case is as follows:

“Where a councilman removes outside the state to accept employment, without any fixed intention either to stay or return, the office which he held does not thereby become vacant.”

In this case it was contended that a councilman had changed his residence by removing from the state. There was a dispute in the evidence as to what his real intention was. The court, in part, said:

“The circumstances go to show that while he entertained some doubt in his mind as to what his future might be, still he did not form any definite intention, as we view the evidence, of renouncing his then existing residence and acquiring a new and definite residence elsewhere.”

It is pointed out in this opinion that one might have no fixed intention when he leaves his home, and yet afterwards his intention may become fixed to remain and not return, and thereby a change of residence is effected.

However, in conclusion the rule may be said to be briefly stated that one changes his residence when leaving a place where he has had a fixed habitation with a definite intention of establishing such home or habitation elsewhere and not intending to return to the former place for the purpose of remaining there. Further, one having removed from his original home with the intention of returning may change his residence by definitely deciding not to return.

As heretofore stated, it is entirely a question of fact when one has changed his residence.

It is believed the foregoing will give you the legal aspects of the case and enable you to apply the rules of law to the question presented.

It may be further observed that circumstances surrounding a removal often afford an indication which has some bearing upon determining what the intent of the party may be.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*