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BOARD OF TOWNSHIP TRUSTEES—FAILURE OF MEMBER TO ATTEND MEETINGS—NOT VACANCY OF OFFICE—MAY BE GROUNDS FOR REMOVAL—O.R.C. 3.07.

SYLLABUS:

Failure of a member of a board of township trustees to regularly attend the meetings of such board does not result in a vacancy in such office, but may be ground for removal of such township officer under Section 3.07, Revised Code.

Columbus, Ohio, January 4, 1963

Hon. Dennis J. Callahan, Prosecuting Attorney  
Lawrence County, Ironton, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“I am in receipt of a letter from Rome Township Trustees reading as follows:

“The regular meeting date of Rome Township Trustees is the 2nd Saturday of each month. Mr. Finley Holderby was elected one of three trustees of Rome Township and he met last with trustees on July 6, 1962. He was absent August, September

and October meetings. Does this disqualify him as a trustee or does he have to resign? The trustees would like to know if they have to declare a vacancy and if so, who makes the appointment of a trustee if vacancy of office is declared?"

"I have been unable to find any section relating to township trustees pertaining to attendance at meetings and would like an opinion on the several questions in the above quoted letter."

Section 503.241, Revised Code, reads as follows:

"Whenever any township officer ceases to reside in the township, or is absent from the township for ninety consecutive days, except in case of sickness or injury as provided in this section, his office shall be deemed vacant and the board of township trustees shall declare a vacancy to exist in such office.

"Such vacancy shall be filled in the manner provided by section 503.24 of the Revised Code. Whenever any township officer is absent from the township because of sickness or injury, he shall cause to be filed with the board of township trustees a physician's certificate of his sickness or injury. If such certificate is not filed with the board within ten days after the expiration of the ninety consecutive days of absence from the township, his office shall be deemed vacant and the board of township trustees shall declare a vacancy to exist in such office.

"This section shall not apply to a township officer while in the active military service of the United States."

When a township trustee refuses to accept the office, dies, or resigns therefrom, a vacancy obviously occurs in such office. It is also clear from a reading of the above statute that a township office shall be declared vacant whenever a township officer is absent from the township for ninety consecutive days, or ceases to reside in the township. And once declared vacant, such office shall be filled in accordance with Section 503.24, Revised Code.

Failure to regularly attend meetings is apparently not one of the circumstances which results in a vacancy in a township office. Except for Section 503.241, *supra*, no statute can be found which provides that the absence of a township officer from his office results in a vacancy in that office. See Opinion No. 243, Opinions of the Attorney General for 1957, page 70.

Failure to attend to the duties of an office, while not being sufficient ground for declaring such office vacant, may nevertheless be sufficient ground for removal under Section 3.07, *et seq.*, Revised Code, which reads:

“Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.”

Accordingly, it is my opinion and you are advised that failure of a member of a board of township trustees to regularly attend the meetings of such board does not result in a vacancy in such office, but may be ground for removal of such township officer under Section 3.07, Revised Code.

Respectfully,

MARK McELROY

Attorney General