

OPINION NO. 70-070

Syllabus:

A member of a village board of trustees of public affairs, duly elected under Section 735.28, Revised Code, which requires such members to be residents of the village, forfeits his membership on such board when he ceases to be a resident of the village.

To: Herman G. Cartwright, Jr., Clinton County Pros. Atty., Wilmington, Ohio
By: Paul W. Brown, Attorney General, June 17, 1970

Your request for my opinion asks whether a duly elected member of a village board of trustees of public affairs can move his residence, after being duly elected, to a location outside the jurisdiction wherein the board of public affairs has authority, and continue to serve on this board?

Section 735.28, Revised Code, pertaining to such board and its members, provides in pertinent part as follows:

"In each village in which a water works, electric light plant, artificial or natural gas plant, or other similar public utility is situated, or when the legislative authority thereof orders a water works, electric light plant, natural or artificial gas plant, or other similar public utility, to be constructed, or to be leased or purchased from any individual, company, or corporation, or when such legislative authority determines to establish a schedule of rates or charges of rents for use of the sewage system and sewage pumping treatment, and disposal works of the village, such legislative authority shall establish a board of trustees of public affairs, which shall consist of three members who are residents of the village.

"* * * * *

"In case of a vacancy in such board

from death, resignation, or otherwise, it shall be filled for the unexpired term by appointment by the mayor, subject to confirmation by the legislative authority."
(Underlining ours)

The statute requires the members of the board of trustees of public affairs to be "residents of the village". However, the statute does not specifically state that a member of the board forfeits his office upon ceasing to be a resident of the village, unless such result was intended by the underlined language regarding vacancies. An examination of the history of Section 735.28, supra, and the case law interpreting such section does not reveal prior consideration of the specific question involved.

The Supreme Court of Ohio, however, has held that a public officer must be qualified to hold his office not only when he is elected or appointed thereto, but also through his term of office. State, ex rel., v. Orr, 61 Ohio St. 384, 385 (1899); State, ex rel., v. Pask, 126 Ohio St. 633, 635 (1933); State, ex rel., v. Brown, 157 Ohio St. 368, 373 (1952); 44 O. Jur. 2d, Public Officers, page 516, section 26.

Since a member of a board of trustees of public affairs is a public officer, the qualification of residence required by Section 735.28, supra, is one that continues throughout the member's term of office.

It is therefore my opinion and you are hereby advised that a member of a village board of trustees of public affairs, duly elected under Section 735.28, Revised Code, which requires such members to be residents of the village, forfeits his membership on such board when he ceases to be a resident of the village.