

OPINION NO. 66-044**Syllabus:**

1. When a township clerk has ceased to reside in the township, it is mandatory for the township trustees to declare the office vacant.

2. A vacancy must be said to exist from the time the officer ceases to reside in the township, and not from the time the board of township trustees declares the office vacant pursuant to Section 503.241, Revised Code. (Opinion No. 3310, Opinions of the Attorney General for 1962, page 762, approved and followed.)

3. A person who has ceased to reside in the township and is thereby disqualified from serving as township clerk cannot be appointed to serve as deputy township clerk.

To: Thomas L. Tribbie, Guernsey County Pros. Atty., Cambridge, Ohio
By: William B. Saxbe, Attorney General, February 24, 1966

Your recent request for my opinion contained the following questions:

"1. Is it mandatory, pursuant to R.C. 503.241, for the Township Trustees to declare the office of Township Clerk vacant when the incumbent of said office moves away from the township and establishes residence elsewhere?

"2. Does a vacancy in the office of Township Clerk exist from the time the incumbent ceases to be a resident of the Township, or from the time the Township Trustees declare the office vacant pursuant to R.C. 503.241?

"3. When the office of Township Clerk becomes vacant by reason of the incumbent ceasing to be a resident of the township and the Township Trustees are unable by diligent efforts to locate a successor, can the Township Trustees, acting pursuant to R.C. 507.02 designate the former clerk as 'Deputy Clerk' until such time as his successor is named and qualified even though said former clerk is not presently a resident of the township?"

Section 503.24, Revised Code, prescribes the procedure to be followed when a township office is vacant:

"If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term.

"If a township is without a board or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the county court of such county shall appoint suitable persons, having the qualifications of electors in the township, to fill such vacancies for the unexpired term.

"Wherever, in any township, a municipal court replaces the county court and there is no board of township trustees, or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the municipal judge or the presiding municipal judge (,) if there is more

than one, may fill vacancies on the board. In those townships wherein there are no judges of a county court or municipal judges and there is no board of township trustees, or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the probate judge may fill vacancies on such board."

Section 503.241, Revised Code, provides when a township office is to be deemed vacant:

"Whenever any township officer ceases to reside in a 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."

The situation in which a township officer has ceased to reside in the township is specifically referred to in Section 503.241, supra. This provision clearly applies to a situation in which a township clerk has moved away from the township and established a residence elsewhere. Since the township clerk has "ceased to reside" in the township, it is mandatory for the township trustees to declare the office vacant.

Opinion No. 3310, Opinions of the Attorney General for 1962, page 762, provides an answer to your second question. Paragraph three of the syllabus of that Opinion reads as follows:

"Under Section 503.24, Revised Code, when a vacancy is found to exist under Section 503.241, Revised Code, the board of township trustees, if such board exists, must appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term within thirty days from the time such vacancy actually occurs."

The then Attorney General reasoned that to interpret these sections otherwise would place in the control of the board the power to hold an office open indefinitely, since all the board would have to do to accomplish this would be to refuse to declare the office vacant. Therefore, the vacancy must be said to exist from the time the officer ceases to reside in the township, and not from the time the board of township trustees declares the office vacant pursuant to Section 503.241, supra.

Section 507.02, Revised Code, provides that the board of township trustees may appoint a deputy township clerk in certain prescribed situations:

"When a township clerk is unable to carry out the duties of his office because of illness, because he has entered the military service of the United States, or because he is otherwise incapacitated or disqualified, the board of township trustees shall appoint a deputy clerk, who shall have full power to discharge the duties of such office. Such deputy clerk shall serve during the period of time the clerk is absent or incapacitated, or until a successor clerk is elected and qualified. Before entering on the discharge of his duties, the deputy clerk shall give bond, for the faithful discharge of his duties, as required under section 507.03 of the Revised Code. The board shall, by resolution, adjust and determine the compensation of the clerk and deputy clerk. The total compensation of both the clerk and any deputy clerk shall not exceed the sums fixed by section 507.09 of the Revised Code in any one year."

Since the deputy township clerk has full power to discharge the duties of the office of township clerk, it is my opinion that a person appointed to this position must fulfill the same requirements as one who might be appointed to fill the vacancy pursuant to Section 503.24, supra. Therefore, a person who is not qualified as an elector of the township could not be appointed to serve as deputy township clerk. To appoint a person who has been disqualified as township clerk to the office of deputy township clerk, which office performs the same functions as township clerk, would be to accomplish indirectly what could not be accomplished directly. Whatever the practicalities of this solution might be, such a circumvention of the statutory requirements could not have been the intent of the Legislature in drafting Section 507.02, Revised Code.

Therefore, it is my opinion and you are hereby advised that:

1. When a township clerk has ceased to reside in the township, it is mandatory for the township trustees to declare the office vacant.

2. A vacancy must be said to exist from the time the officer ceases to reside in the township, and not from the time the board of township trustees declares the office vacant pursuant to Section 503.241, Revised Code. (Opinion No. 3310, Opinions of the Attorney General for 1962, page 762, approved and followed.)

3. A person who has ceased to reside in the township and is thereby disqualified from serving as township clerk cannot be appointed to serve as deputy township clerk.