

OPINION
46-240

November 8, 1946 (OPINION)

VILLAGE

RE: Vacancy on Board - Remaining Members Transact Business

This is in reply to your letter of November 5, 1946, in which you say that a member of your village board is leaving for a four month trip for a much needed rest. You desire the opinion of this office as to whether it will be necessary for him to resign or whether the two other members of the board can function in his absence.

Section 40-0719 of the 1943 Revised Code provides:

If a vacancy occurs in the board of trustees or any other office, such vacancy shall be filled by appointment at a special meeting of the board. If a vacancy is to be filled on the board of trustees, the appointment shall be made from the district where the retiring trustee was elected. All appointments shall be for the unexpired term."

But as long a majority of the board of trustees can agree they can function and carry on the business of the village. Of course, if the two remaining members should fail to agree, a deadlock would result and the third member would be necessary to break the tie. In the event of such contingency the member of the board who will be absent can either resign or come back to New Leipzig. But as long as the two remaining members agree I can see no reason why it should be necessary for the member, referred to in your letter, to resign.

NELS G. JOHNSON

Attorney General