

**OPINION
47-60**

January 27, 1947 (OPINION)

COUNTIES

RE: County Commissioners Must Maintain Legal Residence in District for
Which Elected

This is in reply to your letter of January 21, 1947, in which you say:

Could a county commissioner live across the border of his respective county and still serve his full term as county commissioner.

For instance, could I live in Streeter two miles from Logan County border, and serve my people as county commissioner. In fact I would be more in the middle of my county in Streeter as I am in Gackle. Gackle is located at the end of Logan County and Streeter is about at the middle of my county but across the line, as the map would clearly show. No doubt some people in Gackle or around would (not) like it so much, but most of the people would appreciate it very much."

In order to hold the office of county commissioner, it is necessary that you maintain your residence in the county and district therein from which you were elected. Section 11-1102 of the 1943 Revised Code provides:

Each county commissioner shall be chosen by the qualified electors of the district of which he is a resident."

Subsection 7 of section 44-0201 of the 1943 Revised Code provides:

An office shall become vacant if the incumbent shall:

7. Cease to be a resident of the state, district, county, or township in which the duties of the office are to be discharged, or for which he may have been elected; * * *

If, therefore, you move from Gackle to Streeter, which is in Stutsman County, with the intention of changing your legal residence, you immediately become ineligible to hold the office of county commissioner in Logan County. Under the provisions of section 44-0201 of the Revised Code, your office as county commissioner then becomes vacant.

If, for instance, you are now engaged in business in Gackle and move to Streeter for the purpose of engaging in business there, that would be presumptive evidence of your intention to change your residence. But if it is your intention to move to Streeter and live there temporarily only - say for the purpose of enabling your children to attend school there - then it is my opinion that you may do so and still retain your legal residence in Logan County. You might, for

example, move your family to Fargo or Grand Forks, or even to Minneapolis, in order to enable your children to attend college. You would still retain your legal residence in your district in Logan County if you had no intention of abandoning your home and residence there, but intended to reside elsewhere only temporarily.

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