

Opinion No. 41-3686

January 10, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*25} This will acknowledge receipt of your letter dated January 9, 1941. You ask:

"In your opinion would the absence from a municipality for any length of time automatically create a vacancy in the office of the Village Trustees?"

Your attention is called to Section 90-3409 of the 1929 Compilation which provides as follows:

"By the concurrent vote of four members of the board of trustees, any appointive officer of the corporation may be removed from office, but no such removal shall be made without a charge in writing and an opportunity of hearing being given, unless the officer against whom the charge is made shall have removed out of the limits of the corporation, and when any officer shall cease to reside within the limits of the corporation it shall be deemed a good ground for a removal from office."

Upon first reading the above statute it would appear that same applies only to appointive officers. However, your attention is directed to that portion of the aforesaid statute which provides as follows:

"* * * and when **any** officer shall cease to reside within the limits of the corporation it shall be deemed a good ground for a removal from office."

It is to be noted that the Legislature does not state "any **such** officer" but "**any officer**."

In view of the foregoing, it is my opinion that a vacancy would not **automatically** exist in the office of the Village Board of Trustees, if a member of said Board should move out of the village, but said trustee may be removed from office as provided in said Section 90-3409, i. e., by concurrent vote of four members of the Board of Trustees.

Trusting the above sufficiently answers your question, I am