COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
FRANKFORT

ROBERT F. STEPHENS
ATTORNEY GENERAL

July 6, 1976

John Marshall Prewitt, Esquire
9 East High Street
P. O. Box 385
Mount Sterling, Kentucky 40353

OAG 76 381

Dear Mr. Prewitt:

This is in reply to your letter raising two questions, the first of which is as follows:

> "Referring to Section 234 of the Constitution of Kentucky, if a member of the Board of Trustees of a City of the Sixth Class moves outside the city limits, has he automatically vacated his office, or does he still hold his office legally, or as a de facto officer until his office is declared vacant by judgment of a court?"

Since your question refers to an officer in a sixth class city we first direct your attention to KRS 88.170, providing in part that no person shall be eligible to hold any office in the city, except the office of marshal, unless he is a resident and elector in the city. Furthermore, Section 234 of the Kentucky Constitution provides in part that all city officers shall reside within their respective cities. Thus, if a member of the board of trustees moved his residence outside the corporate limits of the city and is no longer a resident and qualified voter therein, he has disqualified himself and would be subject to removal.

The officer, however, does not automatically vacate his office by moving from the city. Until such a disqualified

officer either resigns or is removed from office, he serves as a de facto officer and his acts are considered valid. See Commonwealth Ex Rel. Breckinridge v. Winstead, Ky., 430 S.W.2d 647 (1968) and OAG 75-722, copy enclosed. In connection with the removal of a member of the board of trustees because of nonresidency see OAG 74-402 discussing KRS 415.050.

Your second question refers to Section 234 of the Kentucky Constitution and KRS 74.020 (1) (a). You ask the status of a commissioner of a water district who has moved outside the boundaries of the district.

As stated in City of Newport v. Schindler, Ky., 449 S.W.2d 17 (1969), the word "officer" as used in Section 234 of the Kentucky Constitution only applies to those directly named and designated in the Constitution. Thus, Section 234 of the Kentucky Constitution is not applicable to a water district commissioner.

KRS 74.020 (1) (a) provides in part that a water district's board of commissioners shall consist of three residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established. It would, therefore, be our opinion that if a commissioner of a water district moved his residence outside the jurisdictional limits of the water district he has disqualified himself and would be subject to removal.

A commissioner of a water district, however, would not automatically vacate his office by moving outside the district and until such a disqualified person resigned or was

76-381

removed he would be a de facto officer whose acts are considered legal. As to the removal of a water district commissioner see OAG 72-230, copy enclosed, and KRS 74.455.

Very truly yours,

ROBERT F. STEPHENS
ATTORNEY GENERAL

Thomas R Emerson

By: Thomas R. Emerson
Assistant Attorney General

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Enclosures