OFFICERS: JUSTICES OF THE PEACE: Removal from township where
Justice is appointed of elected
disqualifies such Justice of
the Peace from holding such
office.

April 3, 1934

FILED
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Honorable Melvin Englehart
Prosecuting Attorney
Fredericktown
Missouri

Dear Sir:

Receipt of your letter dated April 2, 1934 is
acknowledged.   The letter is as follows:

"In this county, there is one township
by the name of German Township.   The
justice residing there has moved from
the township and is residing in an ad-
joining township. The question has arisen
as to whether he is now justice of the
peace or whether the office is vacant.

I think this matter is covered clearly
in section 2164, R. S. of Mo.,1929,which
states that 'whenever a justice of the
peace shall move out of the township,he
shall deliver all files and etc to the
clerk of the county court wherein he
resides.'

Some members of the court say they have
read in the St.Louis-Globe Democrat an
opinion from the State Legal Dept.,
stating the opposite of this and that
they can live in another township and
still serve in the township where elected.
If this is true, please write me or tele-
phone me at once, as we desire to fill
this appointment at once,

I remain."

Doubtless the opinion of this office to which you
refer was an opinion dated March 21, 1934 and had under con-
sideration the status of a county judge and not that of a

Justice of the Peace.

Section 2141 Revised Statutes Missouri 1929 provides:

"No person shall be eligible to the
office of justice of the peace who is
not a citizen of the United States, who
shall not have been an inhabitant of
this state twelve months and of the town-
ship for which he is chosen six months
next before his election, if such township
shall have been so long established, but
if not, then of the township from which
the same shall have been taken."

Section 2164 in part reads:

"Whenever a justice of the peace shall
resign, move out of the township or be
otherwise disqualified, he shall imme-
diately thereafter deliver to the clerk
of the county court, or, if in the city
of St. Louis, the city register, all
dockets, records, books, papers and docu-
ments appertaining to his office.* * * "

The words "or be otherwise disqualified" clearly show
that the moving out of a township when any justice is elected
or appointed is a disqualification to holding such office.

Section 2165 provides:

"The clerk of the county court, or city
register, shall give the person deliver-
ing him such docket and papers a receipt
therefor, and shall immediately thereafter
cause the same to be delivered to some
justice of the peace of the township or
district in which the vacancy occurred,
who shall then be possessed of all causes
remaining undisposed of on said docket, and
shall proceed to dispose of all such causes
as if they had been originally brought be-
fore him."

In Mechem on "Public Officers" Section 438 it is
stated:

"Where the law thus requires the
officer to reside within the district
which he represents, and a _fortiori_
so where it expressly declares that
his removal from the district shall
create a vacancy, a permanent removal
from the district represented will be
deemed an abandonment of the office
and a vacancy will result.

But a mere temporary removal for a
limited time and with no intention
to abandon or surrender the office
or to cease to perform its duties,
will not have this effect."

If the justice of the peace mentioned by you has per-
manently removed his residence from German township with the
intention to abandon his residence in that township then, from
the foregoing, we are of the opinion that he is no longer entit-
led to hold or discharge the duties of the office of justice of
the peace in German township.   As to whether or not the justice
has permanently moved his residence from German township may
involve a question of fact which you or the county court must
determine for yourselves.

                              Very truly yours,

                              GILBERT LAMB
                              Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC