

shall not exceed the per pupil costs for tuition and transportation of tuition and subsistence in the nearest public school in Nevada.

2. Payment of money in lieu of furnishing transportation may be made only if:

(a) The guardian or parents have been residents of the area for a period of time set by the board of trustees; and

(b) The state department of education approves. (Italics supplied.)

QUESTION

If, in a given case, it is impractical or not economically feasible for Nevada school pupils to be transported from their Nevada home to a Nevada public school and the parents or guardian of such children elect to send them to a public school in an adjoining state, is it a condition precedent to the allowance of money under [NRS 392.350](#) that such children be sent to the public school in such adjoining state which lies nearest to their Nevada residence?

ANALYSIS

We will assume that the qualifying conditions set forth in subsection 2 of [NRS 392.350](#) are met, in the case under review, or any case that may hereafter arise. We will also assume that the board of trustees of the county of Nevada residence of the school children are in accord that under the circumstances the children must be sent to a public school of an adjoining state. The amount that is allowable is in such case determined by the local board of trustees, by computations to be made by them, under the limitations of the statute, and in no case to exceed the maximum sum provided.

The sole question here to be resolved is whether or not the statutory allowance should be denied if the parents or guardian elect to send the child to a school in the adjoining state, which is not the nearest school. The statute does not limit the discretion of the parents. To read such a limitation into the statute is to divest the parents of the right and privilege of planning for the child's education and welfare (while away from home) in their consideration of all of the circumstances which they alone best comprehend.

To read such a limitation into the statute would effect no economy as to the costs or sums to be laid out by the Nevada board of trustees, for the computation under the statute does not reflect this item.

Under an earlier statute (Chapter 306, Statutes 1953) other conclusions were reached. See A.G.O. No. 128 of November 23, 1955. However, [NRS 392.350](#) was amended by Chapter 36, Statutes 1961, adding the language "or in an adjoining state," which results in the conclusion hereinafter set out.

CONCLUSION

The question is answered in the negative.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By D. W. PRIEST, *Chief Assistant Attorney General*

179 Public Officers; Boards of County Hospital Trustees—Vacancy on county hospital board occurring subsequent to the last primary election and also after the first Wednesday in October must be filled through appointment by the board of county commissioners of the county concerned, and the

appointee holds office until his successor is elected and qualified at the next general election following a primary election.

CARSON CITY, October 21, 1964

HON. GRANT DAVIS, *District Attorney, Churchill County, Fallon, Nevada*

STATEMENT OF FACTS

DEAR MR. DAVIS: A member of the Churchill County Hospital Board whose term would have expired at the end of 1966, died on October 14, 1964. In connection with making an appointment to fill the vacancy several questions have arisen, chief of which are as follows:

1. Are the County Commissioners of Churchill County required to make such an appointment prior to the general election in November?
2. If no appointment is made by the county commissioners until after the general election, will an appointment made at that time be valid for the balance of the deceased member's term?
3. Due to the unusual circumstances present in this case, should there be a special election held after the general election?

ANALYSIS

We are first concerned with whether or not there is any statutory provision for placing the name of a nominee for this vacant office on the general election ballot. Under the election laws, [NRS 293.165\(2\)](#), such provision is made which appears to be applicable to all public offices, including that of a county hospital trustee. However, it is of no avail here because, under [NRS 293.165\(3\)](#), the procedure there required must be followed before 5 p.m. of the first Wednesday of October. Undoubtedly this time limit was set to allow sufficient time for the printing of ballots before the general election. It becomes obvious that under these sections of this statute a nominee may not go on the general election ballot for an office which becomes vacant after the above-mentioned deadline.

Since a nominee may not go on the ballot for the general election in November, the necessity exists for an appointment to be made to fill the vacancy on the Churchill County Hospital Board. Provision is made for such under [NRS 450.110](#), reading as follows:

Vacancies in the board of hospital trustees occasioned by resignations, removals or otherwise shall be reported to the board or boards of county commissioners and shall be filled in the same manner as the original appointments. Appointees shall hold office until the next following general election in the usual manner.

The provisions of this section are clear and unequivocal, calling for the filling of a vacancy on a county hospital board in the same manner as an original appointment in such cases is made. Original appointments on such boards are made pursuant to [NRS 450.070](#), the pertinent parts of which provide that appointed trustees shall (1) "be chosen from the citizens at large with reference to their fitness for office," and (2) "be residents of the counties concerned * * *." This section also makes it clear that appointees shall hold office until the next following *general election in the usual manner*. The italicized words, in our opinion, impose a certain requirement which, in the case here cannot be met before the general election of 1964. A general election in the usual manner presupposes a previous primary election. This cannot occur until the 1966 elections, and any person appointed to fill a vacancy under this section holds office until that date.

The statute is silent as to when the appointment must be made, but we see nothing in the law requiring that it be made before the 1964 general election date. The appointment may be made at any time after election by the incumbent board of county commissioners or may even be postponed until the newly elected commissioners take office.

CONCLUSION

For the foregoing reasons, this office concludes:

1. That the Board of County Commissioners of Churchill County is not required to fill the vacancy existing on the Churchill County Hospital Board prior to the 1964 general election, but may fill the same within a reasonable time thereafter.
2. Any appointment made by the county commissioners of said county in filling the vacancy in question will be effective until the general election in 1966 when the appointee's successor is elected and qualifies for office.
3. There is no necessity here for a special election to fill this vacancy. We believe that the method for filling vacancies of this type in the method provided for by the Legislature is not only ample but exclusive as well.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By C. B. TAPSCOTT, *Deputy Attorney General*

180 Banks and Banking—The manners in which banks chartered under state law are to receive their working capital are provided by statutory provisions, which provisions are exclusive; these statutes containing precise protective devices as to such capital reflect a legislative intent to fully treat the subject matter, precluding administrative permission to obtain working capital in other manners. [NRS 661.010](#), [661.020](#) and [662.050](#) construed.

CARSON CITY, October 23, 1964

MR. GRANT L. ROBISON, *Superintendent of Banks, Carson City, Nevada*

STATEMENT OF FACTS

DEAR MR. ROBISON: Under the provisions of [NRS 661.011](#), minimum requirements as regards capital and surplus for the chartering of a state bank are provided.

Under [NRS 661.020](#) provision is made for the continuing minimum ratio of equity capital to deposit liability. This equity capital including "paid-up capital, together with the surplus, undivided profits and reserves for losses" must at all times be not less than 6 percent of the total deposit liability.

[NRS 661.020](#) provides:

661.020 (Paid-up capital, surplus, undivided profits and reserves for losses: Percentage of total deposit liability as determined by superintendent of banks.)

1. The paid-up capital, together with the surplus, undivided profits and reserves for losses of any state bank, shall, subject to the limitation of [NRS 661.010](#), be at least 6 percent of the total deposit liability of the bank as may be determined by the superintendent of banks. In determining the amount of paid-up capital, surplus, undivided profits and reserves for losses that shall be required,