Subparagraph (b) of par. 3 of Sec. 459 of the School Code of 1956 provides that nothing in the section cited shall be so construed as to give private schools any right to share in the public funds apportioned for the support of the public schools of this State.

Parents have the right under our constitutional form of government to make a choice as to whether their children shall be educated in the public schools, private schools, or parochial schools. Having made the decision to enroll their children in private schools or parochial schools, they cannot be heard to complain that their children are denied certain privileges which are extended to those children attending public schools, such as free transportation and tuition, for they are fully aware of these benefits at the time their decision is made. They have weighed these benefits against the benefits of private or parochial schools and have determined that the latter outweigh the former. There is nothing to prevent them, should they so desire, from removing their children from the private or the parochial school and enrolling them in a public school.

The constitutional and statutory prohibitions against the use of public funds for educational purposes in private and in parochial schools are as deep seated and as deep rooted as our form of government.

A child regularly enrolled in a private school is there, in most instances, subject to a contract for tuition between the school and the parents. The general rule is that such a contract is entire and that a pupil's incapacity by reason of illness does not relieve the parent of liability for compensation during such illness. (Annotated 69 A.L.R. 715) Nor does the illness place upon the private school the burden of furnishing instruction to such student at home. This is one of the hazards which must be met by the parents by private tuition.

In the case of the parochial school the student is not, by reason of his illness, transformed from a parochial student to a public school student. Upon recovery he will return, not to public school, but to the parochial school. Therefore, the constitutional prohibition as well as the statutory prohibition would prevent the expenditure of public funds to provide educational facilities at his home during his illness.

Question number one must, therefore, be answered in the negative.

The answer to question number two is dependent upon a number of factors. To begin with it is not within the province of school enrolling officials to presuppose that a child enrolled during disability will return to private or parochial school upon completion of his convalescence. If the ill child can meet the eligibility requirements for admission to public school, then this office takes the position that he must be enrolled. It is equally consistent to hold that once enrolled the student is entitled to the same privileges or benefits as are afforded all public school children in that school district. If among those benefits is a program for instructing those unable to attend school by reason of illness or some other incapacity, the newly enrolled student is entitled to instruction while home-bound.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

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**OPINION NO. 56-210 CANDIDATE; JUSTICE OF PEACE—**Legal residence required for the purpose of filing for justice of peace governed by Section 6405, N.C.L. 1929, and not by Section 6 of Chapter 1 of 1956 Election Laws.

Carson City, September 13, 1956

Honorable Grant Sawyer, District Attorney, Elko County, Elko, Nevada

Dear Mr. Sawyer:

Your office has requested an opinion as to the eligibility of a person for the office of justice of the peace of Mountain City, Nevada, based upon the residence requirements of our election laws.

Briefly stated the facts are these: A man has filed for justice of the peace in Mountain City. He commenced residing in Mountain City in October or November of 1955, where he assists in the operation of a grocery store during the week. He maintains a home for his family in Mountain Home, Idaho, where he and his family had resided for a number of years, and visits them there on weekends.

One further fact is set forth in your letter, viz., that this man filed his candidacy for justice of the peace approximately three weeks before he registered to vote in Nevada.

Your specific question, arising as a result of the foregoing facts, is: "Is this man a resident under the provisions of Sec. 6 of Chap. 1 of the 1956 Election Laws?"

## OPINION

Let us first consider the section to which you refer. Sec. 6 of Chap. 1 of the 1956 Election Laws?

> If a man has a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the state, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

This section must be read in conjunction with Sec. 6405 N.C.L. 1929, defining legal residence. Such section reads as follows:

> The legal residence of a person with reference to his or her right of suffrage, eligibility to office, right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he or she shall have been actually, physically and corporeally present within the state or county, as the case may be, during all of the period for which residence is claimed by him or her; provided, however, should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence.

The pertinent part of the law defining what shall constitute legal residence in the State of Nevada insofar as this case is concerned is as follows: "The legal residence of a person with reference to his * * * eligibility to office * * * is that place where he or she shall have been actually, physically and corporeally present within the * * * county, * * * during all of the period for which residence is claimed by him * * *; provided, however, should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without

delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence."

Now it would appear to me that this is the law which should apply to the candidate for justice of the peace, for it specifically places him in the category of one who either is, or is not, by reason of his residence eligible for public office. If this is so the candidate, in my opinion, is qualified. Mountain City, Nevada, is that place where he has been actually, physically and corporeally present during the period for which residence is claimed. When he leaves Mountain City on weekends, there can be little doubt that he intends to return without delay and to continue his residence in the Nevada city. His interests would make any other conclusion an absurdity.

On the other hand, Sec. 6 of Chap. 1 of the 1956 Election Laws applies specifically to the registration of electors for general, special and primary elections. This office pointed out in Opinion No. 146 that in the case of *State ex rel. Boyle v. Board of Examiners*, 21 Nev. 67, the court pointed out: "The qualifications of an elector are those prescribed by the Constitution, and they cannot be altered or impaired by the legislature. *Registration is not an electoral qualification*, but is only a means for ascertaining and determining in a uniform mode whether the voter possesses the qualifications required by the Constitution, and to secure in an orderly and convenient manner the right of voting." There can be no doubt but that the candidate was a qualified elector at the time he filed, despite the fact that he did not register to vote until some three weeks later.

But all other considerations aside, that part of Sec. 6 of Chap. 1 of the 1956 Election Laws applies with full force to this candidate for it reads as follows: "* * * but if his family reside without the state, and he be permanently located within the same, with no intention of removing therefrom he shall be deemed a resident."

It must be apparent, therefore, that the candidate meets the requirements as to eligibility for public office (which is actually the only question in issue) and also as to residential requirements for voting purposes.

Your inquiry must, therefore, be answered in the affirmative with emphasis placed upon the fact that regardless of Sec. 6 of Chap. 1 of the 1956 Election Laws, the candidate would be qualified as to residence in seeking public office.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

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**OPINION NO. 56-211 PUBLIC SCHOOLS—**Any surplus in a school district fund in excess of commitments already made may be expended for construction of buildings for school use.

Carson City, September 17, 1956

Honorable Byron F. Stetler, Superintendent of Public Instruction, State of Nevada, Carson City, Nevada

Dear Sir:

We acknowledge receipt of your letter of the 13th advising that on September 4, 1956, the voters in White Pine County school district elected to authorize the issuance of bonds for the construction of school plant facilities, one of these being the establishment of a school for handicapped children. The opinion of this office is requested on the following question:

**QUESTION**

> Can the construction of this facility (the establishment of a school for handicapped children) be legally commenced at this time (by) using money from the regular budget and reimbursement made to the school district fund from the building fund after the bonds are sold?

**OPINION**

The answer to this question is provided in the new state school code adopted March 2, 1956, being Chap. 32, Stats. of Nevada, 1956 (Special Session), and in our opinion should be in the affirmative.

Sec. 281(1) of said code provides in part:

> * * * the board of trustees of a school district may make such special provisions as in its judgment may be necessary for the education of physically handicapped minors.

And to effect this purpose, it is provided in Sec. 286(2) that:

> * * * boards of trustees of school districts may: (a) Purchase sites and erect buildings for such purposes in the same manner as other school sites or school buildings may be purchased and erected.

These sections clearly authorize boards of school trustees in either county or joint school districts to provide for facilities to educate mentally handicapped children residing within any such district. Use of funds for this purpose would constitute a valid use thereof. Sec. 129(2) of the code provides in part:

> Money on deposit in the county school district fund, *when available,* may be used for: (c) Repair and construction of buildings for school use. (Italics supplied.)