November 9, 1939

Honorable A. T. Broughton,
President, Board of Trustees
Confederate Soldiers' Home,
State Auditor's Office,
Jefferson City, Missouri.

Dear Sir:

Since rendering you an opinion on November 7th, relative to the children of employees of the Confederate Soldiers' Home of Missouri being entitled to attend the Higginsville High School, another case supporting the conclusion and view which I expressed in that opinion, is that of State ex rel. v. Clymer, 164 Mo. App. 671, l. c. 680, which held as follows:

> "An instructive case is State v. Belleck, 107 N. W. 1022. In that case the Governor and the Superintendent of Schools of the state applied for writ of mandamus to compel the board of education of the school district of Lincoln, the capital of the state, to permit their children to attend school without the payment of tuition. As to the Governor, the Constitution of Nebraska, as ours, required him to reside at the seat of government during his term of office. There was no such provision as to the school superintendent. Both of the state officers maintained their legal residences at their former homes, which were not in the city of Lincoln. The court held that their children were entitled

> to attend the schools, and that the word 'reside,' contained in their statute, as it originally existed, would not necessarily be construed to mean a legal residence as distinguished from actual inhabitance, and that the true test was the motive or intention of the parents when they took up their abode in the school district. And if the family or the person or persons having legal custody and control of children of school age, removed to and lived in a school district, principally from other motives than obtaining the privilege of the schools for their children, even though their stay in the school district is not expected to be permanent, their children should not be deprived of school privileges while so living in the district. On the other hand, if the removal is to the school district for the purpose of obtaining the advantages of the school, without expense to the family, the school authorities may protect the district from such imposition. To the same effect is School District v. Matherly, 84 Mo. App. 140."

Please consider the above case as part of the opinion, as it appears to be directly in point.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

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