to your question is in the plain language of the statute, which provides that "no person shall be admitted . . . under such order after the expiration of one (1) year from and including the date of such order, unless the probate court shall issue a new order for said commitment based on such information *as the court may require.*" (Emphasis supplied) An entirely new proceeding is not required.[2]

Mere change of residence would, of course, not effect the need of the individual for hospitalization or the fact that such individual had been adjudged insane pursuant to law.[3]

The answer to your second question, then, is that the probate court may enter a new order for commitment upon whatever information the court deems relevant whether or not the family of the patient continues to reside in the county of original commitment. Full new proceedings are not required.

Your next question is as follows:

> "What is the effect to the liability of a county which issues an order when the family has moved between the date of petitioning and the date the order is issued?"

Answering your question, the statute plainly fixes the liability as of the date when the patient is admitted. In the case you put this would be the county to which the family has moved.

FRANK J. KELLEY,
Attorney General.

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[2] O.A.G. 1950, No. 1145, p. 445, copy attached.

[3] M.C.L.A. § 334.21; M.S.A. 1970 Cum. Supp. § 14.811, provides for the filing of a petition for commitment in the county where the patient resides *or may be.*

CONSTITUTIONAL LAW: State aid to nonpublic schools.

Proposed amendment prohibiting use of public funds for nonpublic schools discussed.

No. 4715 November 3, 1970

Representative Marvin R. Stempien
House of Representatives
The Capitol
Lansing, Michigan

You have requested my legal opinion concerning proper interpretation of the proposed constitutional amendment which will appear on the ballot as Proposal C on November 3, 1970.

The precise wording of the proposed constitutional amendment was drafted by a citizens group and appeared on initiative petitions bearing signatures in excess of 320,000 registered electors. The statement of the proposal appears in the following language:

"Article 8, Section 2. No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deduction, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school."

In *Garman, et al v. Hare, et al* 26 Mich. Appeals 403, September 2, 1970, the Court of Appeals determined that the petitions complied with constitutional and statutory requirements and that the full text of the proposed amendment would, if adopted by the people, become a part of Article VIII, Section 2 of the Michigan Constitution of 1963. Subsequently, on October 5, 1970, the Michigan Supreme Court denied leave to appeal this decision of the Court of Appeals. Neither court, however, undertook to interpret the meaning of the proposal, nor to delineate its legal consequences. Therefore, because of widespread interest and concern on the part of many citizens, I have prepared this formal legal opinion to advise the people of the effect that adoption of this proposal would have.

If this proposal were to become a part of Article VIII, Section 2 of the Constitution, its interpretation would be governed by the usual rules of construction. The ultimate interpretation will be made by the Supreme Court. These rules of construction are not technical as courts attempt to give the employed words a fair interpretation bearing in mind that the framers intended the words to be used in their natural sense. *Decher v. Secretary of State* (1920), 209 Mich. 565. Thus words used in any constitutional provision are given their natural, obvious and ordinary meaning and are construed in that sense which common usage justifies. *John Hancock Mutual Life Insurance Co. v. Ford Motor Company* (1948), 322 Mich. 209. In addition, it may not be presumed that a single word was inserted in the organic law of the state without the intention of conveying some meaning thereby. *Romano* v. *Auditor General* (1949), 323 Mich. 533.

The Supreme Court has also ruled that the language of a constitutional amendment must be considered in conjunction with the known condition of affairs out of which the occasion for its adoption may have arisen. Thus, if there are any doubtful expressions in the amendment, it should be construed so as to forward the known purpose or object for which the amendment was adopted. *Civil Service Commission v. Auditor General* (1942), 302 Mich. 673.

In the light of these general rules of interpretation, I will review the several anticipated circumstances under which this amendment would be applied.

1. Parochiaid

By Chapter 2, Act 100, P.A. 1970; M.C.L.A. § 388.665 et seq; the legislature enacted a provision granting public funds to pay a portion of the salaries of lay teachers who teach nonreligious subjects in private or parochial schools. It is clear that the language of the first sentence of the proposed amendment would prohibit such expenditures of public funds and the effect of adoption of this amendment would be to make this section of Act 100, P.A. 1970, unconstitutional.

2. Transportation

Section 591 of the School Code of 1955, as amended, Act 269, P.A. 1955; M.C.L.A. § 340.591; provides that:

> "The board of any school district may enter into a contract with any other district or with private individuals to furnish transportation for nonresident pupils attending public and state approved nonpublic schools located within such district or in other districts. In no event may the price paid for such transportation be less than the actual cost thereof to the district furnishing the same."

The last sentence of the proposed amendment specifically provides that:

> "The legislature may provide for the transportation of students to and from any school."

It is therefore also clear that adoption of Proposal C by the people will not terminate public transportation programs for nonpublic school students and Section 591 would remain intact.

3. Payments and Tax Benefits

Various proposals have been offered allowing children attending nonpublic schools or their parents to receive some assistance such as a tax deduction or a direct payment from the state. However, the second sentence of the proposed amendment in broad language prohibits payments or credits of this nature and the legislature or any political subdivision or agency of the state would not be permitted to adopt such methods of providing benefits.

4. Auxiliary Services

The current school code of 1955, supra, contains various provisions that provide services to students who attend nonpublic schools. These services include speech correction, visiting teacher programs for delinquent and disturbed children, remedial reading programs, diagnostician services, teachers' counseling services for physically handicapped children, and teachers' counseling services for emotionally and mentally handicapped children. These programs would be barred since the language of the proposed amendment is phrased in broad terms which provide for the furnishing of transportation to and from any school as its only specific exception.

5. Property Tax Exemptions to Nonpublic Schools

In *Garman v. Hare,* supra, the Court of Appeals, ruled that current constitutional provisions would not be altered or abrogated by the pro-

posed amendment. Therefore the following provision of Article IX, Section 4, would remain as part of the Constitution:

> "Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes."

As this provision would not be abrogated by the adoption of the amendment, I am of the opinion that all property owned and occupied by private educational organizations that is used for educational purposes will continue to be exempt from real and personal property taxes.

6. Normal Governmental Services

It is my opinion that such governmental services as are normally provided to citizens such as fire protection, police protection, public sanitation and sewerage would not be affected by adoption of the proposed amendment, nor would the holding of athletic events between public and nonpublic schools be affected. Our courts have consistently ruled that the state is required to furnish ordinary health and police protection services to all on a nondiscriminatory basis as the equal protection clause of the 14th Amendment imposes such a mandate upon all departments of the government including its political subdivisions; *Snowden v. Hughes* (1943), 321 U.S. 1; and judicial branches, *Shelley v. Kraemer* (1947), 334 U.S. 1. As "persons" within the meaning of this clause refers to corporate as well as private individuals; 16 Am. Jur. 2d "Constitutional Law" § 492, pp. 857, 858; the protective scope of the 14th Amendment forbids the legislature from denying such protection and services to nonpublic educational organizations.

7. Shared Time

Under the amendment, public funds could not be used to support the attendance of nonpublic school students at "any location or institution where instruction is offered in whole or *in part* to nonpublic school students." (Emphasis supplied.) Such a definition clearly includes a public school offering curricular programs to nonpublic school students. Therefore, shared time or dual enrollment programs would be barred.

8. Federal Funds

There are numerous programs established by Congress which provide for services to nonpublic schools. For example, the Economic Opportunity Act of 1964, as amended, 42 U.S.C. § 2781, provides for a program known as Head Start which offers economical disadvantaged preschool children learning experiences, medical and dental examinations, and proper nutrition. Currently, any public or private nonprofit agency is an eligible applicant. Similarly, the National School Lunch Act, 42 U.S.C. §§ 1752-1755, 1759, 1759a, 1760, provides commodity and cash grants to state educational agencies to assist them in providing adequate school lunches. Under this program the state educational agency must enter into an agreement with the secretary of agriculture and then enter into agreements with public and nonprofit private schools. Also, pur-

suant to Executive Order No. 11074 of January 9, 1963, any state or local school system and any public or nonpublic recreation agency may apply for information and assistance for beginning or improving health and physical education activities. There are numerous other federal programs designed to assist students attending both public and nonpublic schools. It is, however, beyond the capacity of my office to determine whether the adoption of the proposed amendment would jeopardize any of the numerous federal programs. This is a matter for determination by the appropriate federal agency and, where a federal regulation requires assurance that nonpublic school children will participate in the program, the federal agency will be required to make a determination of whether the proposed amendment would result in a limitation or prohibition of federal assistance.

FRANK J. KELLEY,
Attorney General.

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WORKMEN'S COMPENSATION: Second Injury Fund

Employees who are totally and permanently disabled as a result of an injury that occurred prior to the effective date of Act 227, P.A. 1968 (July 1, 1968), are entitled to receive from the second injury fund all statutory increases in the schedule of benefits without regard to the two-thirds maximum.

Where an employee suffers total permanent disability as a result of an injury occurring after the effective date of Act 227, P.A. 1968, he is not so entitled.

No. 4711 November 9, 1970.

Mr. Barry Brown, Director
Department of Labor
300 E. Michigan Avenue
Lansing, Michigan

You have indicated that as a result of recent legislative enactments and court interpretations thereof in the area of workmen's compensation, a great deal of confusion exists concerning the liability of the second injury fund to pay differential benefits to totally and permanently disabled persons. You therefore asked for my opinion on certain questions concerning statutory amendments and the decision of the Michigan Supreme Court in *King* v. *Second Injury Fund*.[1]

You ask:

> Is the second injury fund obligated to pay the kind of benefits granted to the claimant in *King v. Second Injury Fund* after July 1, 1968, which is the effective date of Act 227, P.A. 1968, (a)

[1] 382 Mich. 480 (1969). The court determined that the claimant, Eva King, was entitled to receive from the second injury fund the current maximum payments allowed in the applicabale schedule without regard to the limitation of two-thirds of the average weekly wage.