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June 8, 1954
Opinion No. 54-77

TO: The Honorable Barry DeRose
Gila County Attorney
Courthouse
Globe, Arizona

RE: Average daily attendance aid to public schools.

QUESTION: The status of children six years of age and the right of schools to receive state and county aid for their education.

The situation as it exists today is this: Section 54-502, A.C.A. 1939, provides, in pertinent part:

> "54-502. Who entitled to attend--Non-residents.--All schools other than high schools and evening or night schools, unless otherwise provided by law, must be open for the admission of children between the ages of six and twenty-one years, residing in the district. * * *"

Hence, the schools are not bound to accept any child in a public school until the child becomes six years old. However, in most schools it has been the practice to accept children who are five if they are to become six during the school year.

The State Board of Education, recognizing this problem, has agreed to give financial support to these children for the entire year although they are not legally bound to do so. We feel that the Board of Education, in giving aid to children of less than six years, is being most realistic and most liberal in meeting the problem that exists.

However, the Board passed a regulation in 1941 which was re-emphasized in 1954 that they would not support children who did not reach the age of six prior to December 31 of the school year.

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We believe the Board of Education has this power pursuant to the powers and duties given them in Sections 54-101 through 54-104, A.C.A. 1939, as amended. Section 54-102, A.C.A. 1939, as amended, sub-section 2, states the Board has power to:

> "54-102. Powers and duties of board.--
> * * * 2. to make rules and regulations for its own government and for the government of its executive officers, prescribe their duties and direct their work where not prescribed by law; exercise general supervision over and regulate the conduct of the public school system within the state; determine the policy and work to be undertaken by the board and delegate to its executive officer the execution of all policies decided upon; * * *"

and sub-section 3 of Section 54-102, supra, provides:

> "54-102. Powers and duties of board.--
> * * * 3. to devise plans for the increase and management of the state school fund, and prepare a budget of the necessary expenditures for the proper maintenance of the board and the carrying out of its purposes, and present the same to the legislature; * * *"

It will be seen that the Board has powers to pass reasonable regulations with regard to the conduct of public schools and the power to devise plans for the management of school funds.

It is our opinion that the rule in question, that is, that a child must reach the age of six by December 31st of the school year, is a valid and reasonable rule under the rule-making power granted to the Board of Education.

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RMJ:bt

cc: To all County Attorneys