NOVEMBER 26, 1951.

HONORABLE JOHN H. BOSSHART,
Commissioner of Education,
175 West State Street,
Trenton 8, New Jersey.

FORMAL OPINION—1951. No. 37.

DEAR COMMISSIONER:

You have requested the opinion of this office as to whether the children who will reside in a certain housing development on the Fort Dix military reservation, known as Sheridanville, will be domiciled in the New Hanover School District so as to make the board of education of that district responsible for their education pursuant to N. J. S. A. 18:14–1.

In my opinion, the answer must be in the negative.

The housing development in question is being constructed by Sheridanville, Inc., a private corporation, which has leased the site of the project from the United States Government. The lease is for a period of 75 years, and among other things it provides in substance that:

(1) The lessee shall lease all units of the housing project to such military and civilian personnel of the armed forces, including government contractors' employees, assigned to duty in the area of the Fort Dix military reservation, as are designated by the commanding officer thereof; provided, however, that in the event that the available accommodations are not leased to the aforesaid personnel, the lessee may lease the available unit or units to "persons other than military or civilian personnel"; and

(2) That the lessee shall pay to the proper authority all taxes, assessments and similar charges which at any time during the term of this lease may be imposed upon the Government or upon the lessee with respect to the leased property, and that "in the event any taxes, assessments or similar charges are imposed through the consent of Congress of the United States upon the property owned by the Government and included in the lease (as opposed to the leasehold interest of the lessee therein)" there shall be an appropriate reduction in the rental provided for in the lease.

The site of the project is part of the land which was ceded to the United States by the State of New Jersey by chapter 354 of the laws of 1938, which transferred jurisdiction over so much of the territory within this State as had theretofore been acquired by the United States for use by the Army, and known as Camp Dix. The act of cession provided that "the jurisdiction hereby ceded shall continue no longer than the United States of America shall own said land or lands and occupy and use the same for military purposes."

According to my understanding, all parties interested in this matter agree that until the execution of the lease in question, children residing on the Fort Dix military reservation after the cession of 1938 have not been residents of a New Jersey school district so as to be entitled to free education therein. Indeed, an examination of the authorities will not permit of any other conclusion.

Since the Fort Dix reservation was not purchased originally by the consent of the New Jersey Legislature, the acquisition did not fall within Article I, Section VIII, Clause 17 of the United States Constitution giving Congress the power "to exercise exclusive legislation" over all military installations acquired by such consent. Consequently, the terms of the grant by New Jersey to the United States control the extent of the jurisdiction transferred by the statute. *James* vs. *Dravo Contracting Co.,* 302 U. S. 134, 142; *Bowen* vs. *Johnston,* 306 U. S. 19, 23; *Surplus Trading Co.* vs. *Cook,* 281 U. S. 647, 651, 652. The act of cession here coincides with numerous others which, according to judicial construction, granted to the United States the entire jurisdiction of this State over the reservation, except in the matter of executing process. See *U. S.* vs. *Unzeuta,* 281 U. S. 138; *Rogers* vs. *Squier,* 157 Fed. 2d 948, cert. denied 330 U. S. 840. In this situation, persons residing on the reservation are not liable to local taxation, have no local elective franchise, and are not entitled to free education for their children in the local public schools. *Opinion of the Justices* 42 Mass. 580; *State* vs. *Board of Education,* 57 N. E. 2nd 118 (Ohio Court of Appeals, 1944); *Fort Leavenworth R. Co.* vs. *Lowe,* 114 U. S. 541; *James* vs. *Dravo Contracting Co., supra.*

The crux of your inquiry therefore is whether the United States Government, by leasing the land in question to Sheridanville, Inc., retroceded to New Jersey the jurisdiction over this territory which it had previously granted to the United States.

After territory has been ceded by a State to the Federal Government, the State can apparently resume jurisdiction over such territory, but only (1) by express retrocession by the United States, (2) by the automatic operation of the reverter clause in the act of cession, or (3) if there is no reverter clause, by retrocession implied from such acts as abandonment by the United States of the property ceded. See *Arlington Hotel Co.* vs. *Fant,* 278 U. S. 439, 455; 65 Corpus Juris 1359. In the present situation, there has been no Federal legislation specifically receding jurisdiction to the State. The question arises, however, as to whether the lease in question has resulted in a cessation of the use of the leased property for military purposes, so that the reverter clause in chapter 354 of the laws of 1938 has become operative.

According to my information, the Army will continue to furnish water, sewage, fire and police service to the housing project. As the lease itself recites, the military and civilian personnel of the armed forces will have priority on all accommodations to be rented in the development. The lease was executed pursuant to subchapter 8 of Chapter 13 of Title 12, U. S. C. A., the very purpose of which, as stated in section 1748(b), is to "assist in relieving the acute shortage of housing which now exists at or in areas adjacent to military installations because of uncertainty as to the permanency of such installations and to increase the supply of rental housing accommodations available to military and civilian personnel at such installations." In view of these facts, it seems clear that the military use of the land in question has not ceased within the meaning of chapter 354 of the laws of 1938.

In a number of cases bearing on this point, the Supreme Court has held that exclusive Federal jurisdiction continued, because essential to enjoyment of the premises as a military reservation, even though in a narrow sense the premises were not being used for military purposes. See *United States* vs. *Unzeuta, supra* (railroad right of way through the reservation); *Benson* vs. *United States,* 146 U. S. 325 (portion of reservation used for farming purposes); *Arlington Hotel Co.* vs. *Fant, supra* (portion of reservation leased for use as a hotel). Even more clearly military is the purpose of the Fort Dix housing project now under discussion.

I am informed that the Army authorities at Fort Dix have taken the view that the lease in question does not terminate the general military use of the property leased. The Federal courts have frequently indicated that the view of the military authorities on the subject will at least be entitled to great weight. See *Bowen* vs. *Johnston, supra,* 306 U. S. at pp. 29-30; *Benson* vs. *United States, supra,* 146 U. S. at p. 331; *Rogers* vs. *Squier, supra,* 157 Fed. 2d at p. 950.

It has been suggested that the local authorities have the power to tax property in the housing development under the paragraph of the lease pertaining to payment of taxes by the lessee. An examination of that clause, however, reveals no support for such a contention. The clause merely provides for payment of such taxes and assessments as may be properly imposed with respect to the leased property, and for an adjustment in the rent "in the event" that any taxes are imposed with the consent of Congress. That event has not occurred, according to my examination of the law, and it follows that no taxes on that property (other than the leasehold interest of the lessee therein) may legally be assessed by the local governmental bodies.

The foregoing reasons lead to the conclusion that children residing in the proposed housing development at Fort Dix do not reside in a local school district within the meaning of N. J. S. A. 18:14-1.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.

tpc;b

NOVEMBER 28, 1951.

HON. PERCY A. MILLER, JR.,
Commissioner of Labor and Industry,
State House,
Trenton 7, N. J.

RE FORMAL OPINION—1951. No. 38.

Regulation of Private Employment Agencies and the Application of Fee Schedule Under Title 34, Chapter 8, of the New Jersey Revised Statutes.

DEAR COMMISSIONER:

Your letter of October 4, 1951, requesting an opinion as to the manner of the charging of fees by a nurses registry under certain circumstances is acknowledged, and opinion rendered as follows:

STATEMENT OF FACTS.

An individual trading as a nurses registry, operating in Ridgewood, Bergen County, New Jersey, is duly licensed under New Jersey Revised Statutes 34:8-1 to 34:8-23, inclusive, to operate as a private employment agency, and has filed with the Commissioner of Labor and Industry a schedule of fees proposed to be charged by the agency. Under the proposed schedule practical nurses must pay $60.00 for