It was this view that the Senate adopted in the subsequent seating of the Judge and it was in the light of this action by the Senate that Governor Morton determined to run for the Senate, and if elected, hold such office, after resignation as Governor.

Therefore, assuming you are eligible under the Federal Constitution for the office of United States Senator it is my opinion that the provisions of the Indiana Constitution cannot deny to you the right to hold such office nor in any manner add to or take away from the eligibility qualifications set out in the Federal Constitution.

OFFICIAL OPINION NO. 8

February 4, 1958

S. T. Ginsberg, M. D.
Mental Health Commissioner
Division of Mental Health, State of Indiana
1315 West Tenth Street
Indianapolis, Indiana

Dear Dr. Ginsberg:

Your letter dated January 13, 1958, requesting my Opinion reads as follows:

"Does the term 'parent of any patient' as used in the definition of a responsible relative in Section 1 (5), Chapter 339, Acts 1955 include the parents of an adult patient who became a patient after his or her emancipation?

"Parents liable for payment of the charge for care and treatment of patients in our hospitals frequently submit the adulthood of their 'child' as a defense against the liability. We want to decide these cases in the light of a professional interpretation of the law."

Acts of 1955, Ch. 339, Sec. 2, as found in Burns' (1957 Supp.), Section 22-4217, provides in part:

"Each patient in a psychiatric hospital of this state, the estate of the patient, the guardian of the patient,
or the responsible relatives of the patient, individually or collectively, are liable for the payment of the costs of maintenance of such patient in an amount to be determined by the division of not to exceed ten dollars [§10.00] per week for each week of hospitalization. * * *” (Our emphasis)

Acts of 1955, Ch. 339, Sec. 1 (5), as found in Burns’ (1957 Supp.), Section 22-4216, defines “responsible relatives” as follows:

“A ‘responsible relative’ means the husband or wife, or the parent of any patient in any psychiatric hospital, and shall include the adult child of any such patient, which adult child is legally responsible for the care and maintenance of such patient.”

In the case of House et al. v. House (1854), 6 Ind. 60, which concerned the obligation of a father to support an adult idiot son, the Supreme Court held:

“The moral obligation upon the father to support his unfortunate son, * * *, was stronger than was such obligation upon a brother of that son, both being alive and able to render the support; and no reason is disclosed by the record why the father should be liable for his own board and not for that of other members of his family.”

The case of Zakrocki v. Zakrocki (1944), 115 Ind. App. 556, 60 N. E. (2d) 745, quoted with approval the following language from 46 C. J. Parent and Child, p. 1269, § 47:

“In the absence of statute, a parent ordinarily is under no legal obligation to support an adult child; but the legal liability for the support of the child ceases when it reaches the age of majority, unless the child elects to remain the servant of its father * * * or unless it is in such a feeble and dependent condition physically or mentally as to be unable to support itself; * * * The obligation of a parent to support a helpless adult child terminates when the necessity of support ceases, * * *.” (Our emphasis)
The Court held:

"In our opinion, a father is and should be just as responsible for the cost of the care and maintenance of an adult child who is physically or mentally unable to support itself as he is for his minor children. * * *"

The case of Pocialik v. Federal Cement Tile Co. (1950), 121 Ind. App. 11, 97 N. E. (2d) 360, held:

"The Indiana cases recognize that as a general rule, 'A parent is not civilly liable for the support of his adult child * * *'. There is no civil obligation to support a child, who, having reached an age where he is able to provide for himself, has left the home of his parents, and who is no longer amenable to parental discipline or restraint, and who no longer renders service to the parent.' * * * Ellebarger v. Swiggett et al. (1891), 1 Ind. App. 598, 28 N. E. 110.

"There is, however, a continuing obligation of support which ceases only when the necessity of support ceases in the case of children of weak mind or body who are unable to support themselves after coming of age and remain unmarried in the parents' home. State v. Troxler (1930), 202 Ind. 268, 173 N. E. 321. * * *"


In the case of State v. Troxler, supra, which concerned an action brought by the State of Indiana against the parents of a child, who was an inmate of the Indiana Farm Colony for Feeble-Minded, for the support of the child at said institution, the Court stated:

"* * * In the instant case, the complaint does not show whether the son of the defendants was a minor or adult. * * *"

The Court then quoted with approval from Schultz v. Western Farm Tractor Co. (1920), 111 Wash. 351, 190 P. 1007, 14 A. L. R. 514, the following:
“* * * Doubtless the legal duty of a parent to support his normal children ceases at the age of majority, but the rule is not the same with respect to his defective children, whether the defect be mental or physical. To these he owes a continuing obligation of support, which ceases only when the necessity for support ceases.”

The Court then proceeded to hold:

“Primarily the duty to support a child rests upon the father. 46 C. J. 1258, § 35. The mother is not, at common law, during the life of the father, bound to support the child. But, by statutory provision, a mother as well as the father may be made liable for the support of a child. * * *” (Our emphasis)

In summarizing the foregoing authority it would appear that in the absence of a civil or criminal statute a parent is under no legal obligation to support or maintain an adult child who is emancipated and capable of caring for himself. However, the Indiana courts of appeal have made it amply clear that a father of a mentally or physically defective adult child has a continuing common-law legal duty to support such child, until such time as the necessity for such support ceases to exist.

In conclusion it is my opinion that in addition to any moral or common law obligation imposed upon a father to maintain and support a physically or mentally defective child, there is a clear statutory liability under Acts of 1955, Ch. 339, supra, which requires certain persons designated therein, including the parents of such child, to render the financial aid prescribed by Section 2 of said Act; and it is my further opinion that under the authorities herein considered such statutory liability applies to parents (including the father and mother) of defective and/or mentally ill adult children, as well as their minor and unemancipated children, who are patients in any psychiatric hospital contemplated by said act.