of two meanings, as the wider popular instead of the more narrow technical one; but the words should be taken in such a sense, bent neither one way or the other, as will best manifest the legislative intent."

I am unable to find in either of the two sections, above referred to, any language specifically stating that each statute refers to a separate and distinct bond. Neither statute purports directly to require the giving of a bond. Section 2911, General Code, merely provides that the prosecuting attorney shall not undertake the duties of his office unless he shall theretofore have filed a bond as therein described. Such section does not attempt to determine the maximum penal amount of such bond. Section 3004, supra, merely provides that the prosecuting attorney shall not be entitled to authorize the payment of, or to receive certain moneys unless a bond containing like conditions to that bond required to be filed before undertaking the duties of his office, in a minimum penal sum of at least the amount of his official salary, shall have been filed. The only difference between the two descriptions of the prosecutor's bond is the minimum penal sum. I am unable to conclude, from the language of such sections, that the intent or purpose of the legislature in the enactment of such provisions, was to require two separate bonds conditioned for the performance of identical duties by the prosecuting attorney.

In specific answer to your inquiry, therefore, I am of the opinion that when the prosecuting attorney, before undertaking the duties of his office, has given bond to the State of Ohio in a sum as fixed by the Common Pleas Court or the Probate Court, in excess of the amount of his official salary, with sureties approved by such court, conditioned that he will faithfully perform the duties enjoined upon him by law, and pay over, according to law, all moneys by him received in his official capacity, it is not necessary for such prosecutor to file an additional bond in order to be entitled to the additional allowance provided in Section 3004, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4864.

TUITION—PERSON IN LOCO PARENTIS MAY NOT BE CHARGED TUITION—PUPIL LIVING WITH PERSON OTHER THAN PARENT OR GUARDIAN.

SYLLABUS:

1. *When children of compulsory school age are in a school district, and "actual residents" of the district "have the care" of them, or are "in charge" of them, as those terms are used in the laws relating to compulsory education, and under such circumstances that those "actual residents" are required to send the children to a public, private or parochial school as provided by Section 7763, General Code, or be subject to the penalties imposed by Section 12974, General Code, if they fail to do so, the board of education of the school district must admit these children to the privileges of the public school of the district, even though someone may be liable under the law for their tuition and the said tuition is not paid.*

2. *By force of Section 7681, General Code, a child who resides with persons other than his parents or guardian, under conditions whereby the person with*

whom he resides stands in loco parentis to him, may attend school in the district where those persons are "actual residents", free of charge. Whether or not the child's residence is of the nature described above, is in all cases a question of fact to be determined from all the pertinent facts and circumstances surrounding the situation. Opinion of the Attorney General for 1927, *page* 160, *reviewed and approved.*

3. *While the new Probate Code provides that it is the duty of the guardian of a minor, when necessary to provide for the maintenance and education of his ward, and that the cost thereof may be paid from the estate of the minor to the extent his estate justifies, it provides with equal positiveness that no part of the estate may be used for the purposes mentioned unless ordered and approved by the court having jurisdiction in the premises.*

COLUMBUS, OHIO, January 6, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

> "May we have your opinion on the following case, which is submitted to us by a northern Ohio county superintendent of schools?
>
> William and George Wilson, whose parents are dead and whose guardian is living in Cuyahoga County, were sent to this county to live with relatives. Their guardian is paying the relatives here for their board and room. So far as know the boys have no other home. The guardian is paying for their livelihood from the estate which was left by their parents. The guardian and the people with whom they live have refused to pay tuition to the board of education in the township where they are living. Due to the fact that the boys are not working for their room and board, but the parties with whom they are living are being liberally paid, it is the opinion of certain members of the board of education that tuition should be collected for their schooling privileges. The question is: Is the board of education entitled to tuition for the schooling of these boys?"

Section 7681 and 7682, General Code, read in part:

> Sec. 7681. "The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, * *"
>
> Sec. 7682. "Each board of education may admit other persons upon such terms or upon the payment of such tuition within the limitations of other sections of law as it prescribes. * *"

The laws relating to compulsory education, provide in Section 7762, General Code, that, "A child between six and eighteen years of age is 'of compulsory school age' for the purposes of this chapter." It is further provided in the said section that the parent, guardian or other person having the care of a child of compulsory school age, shall instruct him, or cause him to be instructed in the manner provided for by other sections of the law, unless he is employed on an age and schooling certificate or shall have been determined in the manner provided by law to be mentally incapable of profiting substantially by further instruction. Section 7763, General Code, provides in part, as follows:

"Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction, must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. * *"

Section 7775, General Code, provides in part:

"If a child is residing apart from its parents, and the parents are not residents of the given school district, the person in whose residence the child resides shall be deemed the person in charge of the child for the purpose of section 7773, 7773-1 or 7774, General Code, * *"

By the terms of Section 12974, General Code, it is provided that a parent, guardian or other person having the care of a child of compulsory school age who violates the provisions of Section 7762 or Section 7773, General Code, shall, upon conviction, be fined, and may be required to give a bond conditioned that he will cause the child in his charge to attend upon instruction as provided by law, and upon the failure to pay said fine or give said bond if required he may be imprisoned for not less than ten days nor more than thirty days.

Applying the provisions of law noted above it would seem clear that the relatives with whom the children in question are living would be the persons "having the care" of them and the persons "in charge" of them for the purpose of the application of the law relating to compulsory education, and that these "relatives" would be amenable to those laws and the persons who would be subject to the penalties imposed by law if the children did not attend school or were not properly excused from such attendance.

The liability for tuition, if any, for the children, would not be upon the relatives with whom they are living but upon the guardian of the children, if this guardian is the guardian of the person of these minor children. It is the duty of the guardian of the person of a minor to provide not only for the minor's maintenance but for his education as well, and the cost of such education to the extent that the amount of his estate justifies may be paid from his estate upon the order and approval of the court. Sections 10507-6, 10507-16, General Code, and Ohio Jurisprudence, Vol. 18, page 286.

I assume, for the purposes of this opinion, that the guardian mentioned is the guardian both of the person and of the estate of the children in question.

Inasmuch as the persons with whom the children are living are required to send the children to school, it is my opinion that the board of education of the district wherein these persons reside is required to admit the children to the schools of the district, and if, under the circumstances, the district is entitled to tuition, the guardian of the children must be looked to for that tuition.

The major question with which we are here concerned is whether or not under the particular circumstances, the board of education could recover from the guardian for tuition for these children. To determine this, we are required to consider the matter from two angles: First, are these children entitled to attend school in the district where they are living, by virtue of the terms of Sections 7681 and 7682, General Code? Second, is there any way that tuition may be recovered for their attendance at school?

Questions of this kind are oftentimes very difficult to answer, even when

all the facts and circumstances incident to the particular case are known. In any event, the surrounding facts and circumstances of any particular case must be weighed, and it is necessary that this be done in the perspective of their local setting. It is difficult for this office to pass definitely on individual cases for the reason that it is difficult to bring to the attention of the Attorney General all the pertinent facts and circumstances so that he may consider them in their inter-relation to each other and apply the law to those particular facts. To quote from an opinion of a former Attorney General, relating to this question:

> "The whole question narrows down to a question of fact which must be gathered from all the circumstances surrounding each particular situation."

See Opinions of the Attorney General for 1927, page 160. As pointed out in the opinion referred to, it is well settled that the term "ward" as used in Section 7681, General Code, should be liberally construed in the interests of the education of the youth of school age in this state. See also, Opinions of the Attorney General for 1918, page 453. The syllabus of the 1927 opinion referred to, is as follows:

> "1. The term ward, as used in Section 7681, General Code, should not be limited to its technical meaning, but should be construed liberally in the interests of the education of the youth of school age in this state.
>
> 2. A determination of the question of whether or not a child has been in good faith committed by its parents to the care and custody of another for the purpose of having a home provided for it, or whether such living with another is merely for the purpose of evading the law requiring the payment of tuition for school attendance, is in all cases a question of fact to be determined from a consideration of all the facts and circumstances surrounding the case.
>
> 3. A child who resides permanently in the home of an actual resident of a school district and to which child such actual resident stands in loco parentis may attend the public schools of such district without paying tuition, even though the parents of such child reside outside the district."

As these children appear to be residing permanently in the home of an actual resident of the school district in question, the whole question is whether or not that resident stands in loco parentis, or in the place of the parent, to the children. If so, the children are entitled to attend the public schools of that district without the payment of tuition, if not, and the estate of the children can bear the expense of tuition, it should be paid.

The mere fact that these children have a legally appointed guardian and that the people with whom they are living are being paid something for their care is not, in my opinion, completely decisive of the matter. Even natural parents may commit the care, control and training of their children to other persons in such a manner and to such an extent that those other persons stand in loco parentis to their children and if that can be done by natural parents, I see no reason why a guardian may not do the same thing.

While the position of a guardian carries with it many of the duties of a natural parent, and technically, he stands in loco parentis to his ward (*Davis* vs. *Ford,* 7 Ohio, Pt. 2, p. 104) circumstances may be such that the guardian is in

no position to really take the place of a parent so far as the care, control, custody and training of his ward are concerned. In that case, he would be justified, in my opinion, in creating a relationship as between his ward and some third person so that the third person would stand to the child in loco parentis. For instance, the guardian may be the representative of a trust company and be the guardian of a score or more of minors. Obviously, in that situation, he could not maintain the relation of a parent to all these children and afford to them the intimate care, control and training that the relationship of a parent implies. This, however, is not the only instance in which a third person might stand in loco parentis to the ward of a legally appointed guardian by commitment or permission of the guardian. Again, the ward's estate in the particular instance, may not be sufficient to justify the payment of tuition. Under the new Probate Code, no part of a ward's estate, either principal or interest, may be used for any purpose unless approved by the court having jurisdiction of the estate. (Section 10507-16, General Code.)

While the education of a minor is, perhaps, as important in a sense, as are his support and maintenance, the court would no doubt consider first the physical needs of the minor during his minority, and protect the estate accordingly.

As stated above, the mere fact that the relatives with whom the children in question reside are being paid for their care, is not conclusive that they do not stand in loco parentis to the children, or that the court would allow something in addition for school tuition. It is possible that these relatives are not financially able to minister to the physical needs of the children, and it is necessary that they be supplied with funds so that they may properly feed and clothe the children. It does not appear from your statement to what extent these people are being paid.

It is well settled that while a father is bound to educate and maintain his children from his own resources, no such pecuniary responsibility is imposed on a legal guardian who is not the parent. The courts have always shown a liberal disposition to protect a guardian from personal liability on account of his ward. In re Hough, 2 N. P. 382, In re Baier, 11 O. D. (N. P.) 47.

From the foregoing, it will be apparent that it is impossible to definitely and categorically answer your question without additional facts to those contained in your somewhat limited statement.

If it should appear by the application of the foregoing principles that the persons with whom these children are living, stand in loco parentis to them there is no doubt but that they may attend school in that district without the payment of tuition by anyone. If the persons with whom these children are living do not stand in loco parentis to them, there is a primary duty on the guardian to provide for the education of the children and therefore to pay their tuition in the schools of this district, providing the court will allow such tuition to be paid from the minors' estate. The guardian himself can not be personally held for that tuition and if the minors' estate will not bear the expense of this tuition, then tuition can not be collected even though under the law the board of education must admit the children to the schools in the district.

Respectfully,
GILBERT BETTMAN,
Attorney General.