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“FOSTER HOME”—FAMILY HOME WHERE PERSONS WHO MAINTAIN HOME, REAR CHILD OR CHILDREN OF ANOTHER AS THEIR OWN—RELATIONSHIP IN LOCO PARENTIS—JUVENILE COURT EMPOWERED TO COMMIT CHILD TO SUCH HOME—WHEN CHILDREN SO COMMITTED, WITH OR WITHOUT ALLOWANCE TO HOME, THEY SHOULD RECEIVE PUBLIC SCHOOL EDUCATION IN SCHOOL DISTRICT WHERE HOME LOCATED WITHOUT PAYMENT OF TUITION.

SYLLABUS:

1. A “foster home”, as the term is used in the law of Ohio, means a family home where the persons maintaining the home rear a child or children of another as their own child or children, and thereby the relationship existing between such persons and the child or children who are being reared is properly described as being in loco parentis.

2. A Juvenile Court is empowered under proper circumstances, as determined by the court, to commit a child to a foster home and to make such terms respecting such commitment as may be proper and suitable under the circumstances.

3. When children are committed by a Juvenile Court to a foster home with or without allowances to such home, the said children should be extended the privileges and advantages of the public schools of the school district in which the home is located without the payment of tuition for attendance in such school.

Columbus, Ohio, January 21, 1941.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

This is to acknowledge receipt of your request for my opinion, which reads as follows:

“We respectfully request your opinion upon the following question:

Two children, whose residence was in the City of Toledo, were found to be dependent by the Juvenile Court of Lucas

County, and were ordered placed in the foster home of persons who were residents of Washington Township, Lucas County.

These children attend the Hopewell School in Washington Township, and we request your opinion on whether the board of education of the Toledo City School District would be liable to Washington Township Board of Education for their tuition.

We are enclosing copies of a letter from the Juvenile Court regarding the Court's action, and other correspondence on this question."

Accompanying your request is a letter of the Juvenile Judge who committed the children in question, addressed to the Clerk-Treasurer of the Toledo City School District, in which he states:

"In making our court order in this case we did not use the word 'custody' but, of course, we placed the custody of the children, both actual and legal, in the foster parents. The order reads as follows:

June 2, 1939: Children found dependent. Ordered placed in foster home of Martin and Betty Hod-dinott until further order. County to pay at rate of \$4.00 per week for each child. Skiba, Probation Officer to supervise. Effective June 2, 1939."

In the consideration of your inquiry it is necessary to give consideration to the provisions of Section 7681, General Code. Among other things, it is provided in said section that the schools of each district shall be free to all youths between six and twenty-one years of age who are children, wards or apprentices of actual residents of the district. Special provision is made therein for attendance of inmates of children's homes, both public and private, and for the attendance of youths who live apart from their parents and work to support themselves by their own labor. Section 7682, General Code, provides that each board of education may admit other persons upon such terms or upon the payment of such tuition, within the limitation of other sections of law as it prescribes. Section 7595-1d, General Code, enacted in 1939, provides in part:

"Pursuant to law, a pupil may attend school outside his district of legal residence, and for such pupil his board of education shall pay tuition not more nor less than that which shall be computed as follows: * * *"

Sections 7681, 7682 and 7595-1, General Code, pertaining as they do, in large measure, to the same matters, are in pari materia, and for

that reason the term "legal residence" as used in Section 7595-1d, should be construed as having reference to a residence such as one that would entitle school pupils to attend the public schools without the payment of tuition by virtue of Section 7681, General Code.

Aside from the question of whether or not the City School District of Toledo or anyone else is responsible under the law for the payment of tuition for the attendance of the pupils in question in the schools of the Washington Township District, the circumstances of their commitment to a home in that district are such that the persons maintaining the home have "charge" of the children, and those persons being residents of the Washington Township District, are required in pursuance of the compulsory school laws, under penalty, to send the children to school. A former Attorney General, upon consideration of questions relating to this subject, held:

"Children who are in the care of, or in charge of residents of a school district, with the exception of children of private children's homes, must be admitted to the public schools of such district. If circumstances are such that some person or other school district or any public or private agency is liable for the tuition of such child in such school the board of education of the school district where the child attends school may enforce that liability in an action at law. In the meantime, the child should not be deprived of the privilege of attending school."

See Opinions, Attorney General, 1929, page 195.

In view of the fact that there is no express, special provision in the law which directs that when children committed by the Juvenile Court to private homes or otherwise, attend the public schools, the district of their last residence before commitment should be charged with their tuition, except as to those committed by the court to children's homes either public or private, which the court is empowered to do (Sections 1639-30 and 7690, General Code) and they attend school while inmates of such home and before they may be placed in "foster" homes by the trustees of a county, semi-public or district children's home by authority of Sections 3095 and 3096, General Code, the question presented by your inquiry involves the determination of the place of legal residence of the pupils in question in the light of the meaning of the term "legal residence" as used in Section 7595-1, General Code, referred to above.

If these children are entitled to attend school in the Washington School District free of charge, by virtue of the provisions of Section 7681,

General Code, their legal residence for school purposes, is in the Washington Township District and obviously, no tuition need be paid for their attendance by anyone, as provided by Section 7595-1d or any other provision of law.

It has always been regarded that where children are in "foster homes", whether placed there by public agencies or by their guardians or natural parents, they are wards of the home, within the meaning of the term "ward" as used in Section 7681, General Code. Different phases of this question have been quite extensively considered in opinions of former Attorneys General, all of which were rendered before the enactment of Section 7595-1d, General Code in its present form and before the enactment of the Juvenile Court Code in 1937. These recent enactments, however, do not in my opinion change or modify the questions set out in the former opinions referred to. In quite an exhaustive opinion rendered by the then Attorney General in 1927, it was held:

"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."

See Opinions, Attorney General, 1927, page 160.

In 1929, the then Attorney General held:

"1. Inmates of a county, semi-public or district children's home who have been placed in foster homes by the trustees of such home, by authority of Sections 3095 and 3096, General Code, may attend the public schools in the district where the foster home is located free of charge.

2. Children who are placed by the trustees of a county, semi-public or district children's home, in so-called boarding homes, by authority of Section 3095, General Code, should be

educated at the expense of the school district which was the last residence of the children before being admitted to the said county, semi-public or district children's home."

See Opinions, Attorney General, 1929, page 195.

In 1931, the same Attorney General held:

"1. Children who have been permanently committed to the Department of Public Welfare, Division of Charities, and who thereafter, by order of the Division of Charities, are placed in foster homes, are entitled to the privileges of the public schools in the district where the foster home is located, free of charge.

2. A child placed by the Division of Charities in a so-called boarding home, must be admitted to the public schools of the school district wherein the boarding home is located. Tuition for such child during its attendance at such school is a proper charge against its legal guardian, the Department of Public Welfare, Division of Charities. Such tuition may be paid by the Division of Charities from funds appropriated by the General Assembly, to the use of the said Division of Charities for that purpose. If no such appropriation exists, payment thereof can not be made, and the only available resource under such circumstances, for the recovery of such tuition, is through the Sundry Claims Board. Of course, if a youth of school age lives apart from his parents or guardian, and works to support himself by his own labor, he is entitled to attend school free, in the district where he is employed, whether or not he had been previously committed to the Division of Charities and placed by said Division in the home where he is employed.

3. There is no provision of law which authorizes charging back to the county or school district of last residence of a child committed to or transferred to the Department of Public Welfare, Division of Charities, the cost of providing school advantages for such child except the provisions with reference to crippled children."

See Opinions, Attorney General, 1931, page 1177.

In 1933, it was held by the then Attorney General:

"1. 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.

2. Where the parents of the child place that child in a boarding house which is conducted as a business enterprise for profit and which lies outside the school district in which the parents reside, the child is not entitled to attend the schools of the

district in which the boarding house is located without the payment of tuition.

3. Where the parents of a child place the child in a home outside the district of the residence of the parents, temporarily, and for the express purpose of that child attending school in the district where it has been placed, the parents are liable to the school district in question, for tuition for the child's attendance in school."

See Opinions, Attorney General, 1933, page 1960.

It appears that the consensus of these opinions is that, when children are placed in private homes whose occupants are actual residents of a school district, in such a manner, whether the placing is done by the parents or guardians of the children or by some public agency authorized to do so, that the residents of the district not only are charged with the custody and care of the children but as well, stand in all respects, in loco parentis to the children, the said children may attend school in the said district without the payment of tuition by anyone.

While the law does not seem to have afforded us a statutory definition of a "foster home", the term, when used in the statute should no doubt be regarded as having been used in its ordinary sense, and by so considering it the implication clearly follows that when children are placed in a foster home, the foster parents in that home stand in loco parentis to the children and therefore, under the law, may attend the school in the district where the foster parents are residents without the payment of tuition.

In Webster's Dictionary "foster home" is defined as, a home where a foster child is reared. "Foster child" is defined as one which is being or has been cared for by a "foster parent" and "foster father or mother" is defined as a woman or man who has performed the duties of a parent to the child of another by rearing the child as one's own child.

The term "foster home" appears in Sections 3095 and 3096 of the General Code of Ohio, wherein trustees of childrens homes are authorized to place inmates of the home in foster homes, and in Section 1639-35, General Code, wherein it is provided that when the Juvenile Court commits a child to an institution or association certified by the State Department of Public Welfare, with permission and power to place in a foster home with the probability of adoption its jurisdiction over the child so

committed shall cease and terminate. No express authority in terms, is contained in the Juvenile Court Code for the court to commit a child to a "foster home." I believe, however, that the authority contained in Section 1639-30, General Code, which is a part of the Juvenile Court Code, is broad enough to permit the court to so commit a child. This statute reads in part, as follows:

"All cases involving children shall be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury.

If the court shall find that a child is delinquent, neglected, dependent, or otherwise within the provisions of this act, it may by order duly entered proceed as follows:

1. Place the child on probation or under supervision in its own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;
2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare and authorized to care for children or to place them in suitable family homes, * * *"

While it is well recognized, as appears from the opinion hereinbefore referred to, that where children are placed in boarding homes, or where they are in a district temporarily and primarily for the purpose of attending school, and their board is paid in some manner, tuition for their attendance in school is chargeable to someone usually their parents or guardians unless they are attending school "pursuant to law" as for instance, where the inmates of public, semi-public or district children's homes attend school in the district where the home is located, the fact that in the instant case by virtue of the court order the custodians of the children are paid four dollars per week for each child, does not, standing alone, in my opinion, constitute the home in question a boarding home, in the sense that the term is used by the former Attorneys General in the opinions referred to. Even where board is paid, if the residence is in a family home and is more or less permanent and is such that the relationship between the family home and the child is that of parent and child, the child must be extended the privileges and advantages of the schools of the district without the payment of tuition.

With respect to this subject, a former Attorney General, in the course of the 1933 opinion referred to above, made the following observations:

"A distinction is sometimes made between what have been called 'boarding homes' and 'foster homes'. This distinction has been pointed out in a former opinion of this office, and it has been generally held that where children are placed in what are strictly boarding homes in contradistinction to foster homes, the district in which the boarding home is located is entitled to collect tuition, if they attend school in that district. On the other hand, if the home in which they are living may be regarded as a foster home they are entitled to attend the public schools in that district without the payment of tuition. See Opinions of the Attorney General for 1929, at page 195 and for 1931 at page 1177.

As cases arise between the two extremes it is necessary to weigh all the circumstances and conditions surrounding the individual situation. Experience has shown that no set formulae can be made to fit all situations. It must at all times be borne in mind that the public school system is state-wide in its operation, that school districts exist for purposes of administration and that the educational needs and welfare of the child are of primary importance. It is the clear intent and purpose of the law that no child within the borders of the state shall be deprived of an opportunity to go to school. Even with this guiding principle in mind and with all the facts and circumstances incident to particular cases known, questions of this kind are oftentimes very difficult to answer. 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 relation to each other and apply the law to those particular facts. The situation is considerably different than if the case were presented to a court where presumably all the facts and circumstances in the perspective of their local setting are before the court.

In the instant case, if the mother of these children has placed them in a private home for the purpose of having a home provided for them, not a mere boarding home, and in such a way that the persons with whom they are placed stand in loco parentis to the children, I am of the opinion that they may attend school in the district where this home is located, without the payment of tuition, even though the mother may pay for their board and care. If, however, the mother has placed these children in this home temporarily, and for the purpose of their attending school, and the persons in charge of the home are boarding and caring for the children with a view to profit, or if the home is conducted as a business enterprise, so that it may be classed as a boarding home, the mother would be required under the law to pay tuition, if they attend the schools of the district."

Upon consideration of the nature of the commitment of the chil-

dren in question, as shown by the order of the court, and other circumstances, together with the fact that the payment of tuition for the attendance of non-resident children in the public schools is purely statutory and no provision is made by statute to the effect that the school district of last residence of a child committed by a Juvenile Court to a family home in some other district is required to pay tuition for attendance of the child in the schools of the latter district, I am of the opinion that the children in question should be extended the privileges and advantages of the public schools of the Washington Township School District without the payment of tuition therefor by anyone.

Respectfully,

THOMAS J. HERBERT,
Attorney General.
