

**Note from the Attorney General's Office:**

1959 Op. Att'y Gen. No. 59-92 was overruled in part by 1980 Op. Att'y Gen. No. 80-095.

92

EDUCATION—CHILDREN, RESIDENTS OF COUNTY CHILDREN'S HOME—DISTRICT OF RESIDENCE AT TIME OF PLACEMENT LIABLE FOR TUITION . . . §3313.64 R.C.

SYLLABUS:

Children who are inmates of a county children's home, who at the time of placement in the home were not school residents of the district in which such home is located, should be admitted to the schools in the district where the home is located, at the expense of their respective school districts in which they were school residents at the time of placement, notwithstanding the status of the children as to temporary or permanent custody by the county welfare board.

Columbus, Ohio, February 6, 1959

Hon. Everett Fahrenholz, Prosecuting Attorney  
Preble County, Eaton, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"The status of certain children, inmates of the Preble County Childrens Home, has been changed from temporary custody in the Child Welfare Board to permanent custody in that Board. These children at the time of placement were residents of a district other than the district in which the Childrens Home is located. Does the change of status of the children, from temporary to permanent custody, affect the obligation imposed by Revised Code Section 3313.64, that the children shall be educated at the expense of the school district in which they were school residents at the time of placement?"

The question presented is controlled entirely by the provisions of Section 3313.64, Revised Code. Pertinent parts thereof are as follows:

"\* \* \* Inmates of the proper age of county, semipublic, and district children's home shall be admitted after the manner described in section 3313.65 of the Revised Code. \* \* \*

"\* \* \* A child who is an inmate of a county, semipublic, or district children's home and who at the time of placement in such home was a school resident of the district in which such home is located shall be entitled to an education at the expense of such school district; any other inmate of such home shall be educated

at the expense of the school district in which he was a school resident at the time of placement.

“\* \* \* Any inmate of a county, semipublic, or district children’s home who at the time of placement was not a school resident of any school district in Ohio shall be educated at the expense of the individual, public authority, or agency making such placement. \* \* \*”

Pertinent parts of Section 3313.65, Revised Code, are as follows :

“The inmates of a county, semipublic, or district children’s home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the board of education of the district in which such home is located. \* \* \*”

It is apparent from these statutory terms that the school district of the inmate, prior to the admission in a home located in a different district, is required to bear the expense of educating the inmate provided by the school district in which the county home is located.

The problem as here presented involves one further fact, this being the children’s change of status from temporary to permanent custody in the Preble County child welfare board. The change of status from temporary to permanent custody, pursuant to Section 2151.38, Revised Code, terminates the jurisdiction of the juvenile court over the children and vests in the child welfare board exclusive guardianship rights, *Conti v. Shriner*, 30 Ohio Law Abs., 193. Does this change of status in any way effect the requirements provided for in Section 3313.64, *supra*?

Expenses involved in the care and maintenance of children by the juvenile court and by the county welfare boards is controlled by Chapter 215., Revised Code, and Chapter 335., Revised Code, respectively. In neither of these chapters is there any distinction made between temporary and permanent custody of the children with regard to responsibility for the expense of such case. This strongly suggests, particularly after consideration of the provisions of Section 3313.64, *supra*, in which no mention is made as to commitment status, that the legislature intended that no distinction should be made. Note that Section 3313.64, *supra*, specifically provides :

“\* \* \* *any other inmate* of such home shall be educated at the expense of the school district in which he was a school resident at the time of placement \* \* \*” (Emphasis added)

In Opinion No. 6669, Opinions of the Attorney General for 1956, page 426, one of my predecessors in office in considering a somewhat related question, held in the first paragraph of the syllabus :

“1. Children who are inmates of a county children’s home, who at the time of placement in such home were not school residents of the district in which such Home is located, should be admitted to the schools of the district in which such Home is located, at the expense of their respective school districts in which they were school residents at the time of placement.”

In *State, ex rel. Gibbs, et al., v. Martin, et al.*, 143 Ohio St., 491, a similar situation, although dealing with foster homes, was decided in the same manner.

It should be borne in mind that the Opinion of the Attorney General for 1956, *supra*, and the decision in *State, ex rel. Gibbs, v. Martin, supra*, do not deal specifically with the question presented here, although in each a consideration of the duty of the district of residence was required. In neither the 1956 Opinion nor the *Gibbs* Case was there any consideration of the status of the children as to whether they were in the *permanent* or *temporary* custody of the child welfare board. This complete omission of consideration suggests that such status is of no consequence in the consideration of a school district’s duty toward the children as imposed by law.

It is therefore my opinion that the obligation of the school district in which the children lived before their commitment in the county home is contingent only upon the children’s school residence therein at the time of such commitment. Where such school residence is shown in a district, such district is required to bear the expense of the children’s education, notwithstanding the type of custody of such children by the county child welfare board.

Accordingly, I hold and you are advised that children who are inmates of a county children’s home, who at the time of placement in the home were not school residents of the district in which such home is located, should be admitted to the schools in the district where the home is located, at the expense of their respective school districts in which they were school residents at the time of placement, notwithstanding the status of the children as to temporary or permanent custody by the county welfare board.

Respectfully,

MARK McELROY

Attorney General