

OPINION NO. 69-111**Syllabus:**

Pursuant to Section 3327.06, Revised Code, a board of education which admits a non-resident kindergarten pupil under the age of six years into its system must look to the child's parents or guardian for the collection of tuition. Under this section the district of the child's residence is not liable to the district of attendance for the payment of said tuition.

**To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education,
Columbus, Ohio**
By: Paul W. Brown, Attorney General, September 9, 1969

I have before me your request for my opinion regarding the following question:

"I respectfully request your opinion as to the responsibility of a school district to collect tuition for non-resident kindergarten pupils, as well as the responsibility of the school district of which the child is a resident, to pay such tuition."

The proper frame of reference may be established by referring to Section 3313.64, Revised Code, which provides in pertinent part as follows:

"The schools of each city, exempted village, or local school district shall be free to all school residents between six and twenty-one years of age."
(Emphasis added.)

In addition, the above section provides for the admission and free schooling of "1/nmates of the proper age of county, semi-public, and district children's homes" pursuant to Section 3313.65, Revised Code.

I assume that the overwhelming majority of kindergarten pupils are under the age of six years. It necessarily follows that according to Section 3313.64, supra, they are not included in the category of children eligible for free schooling. In fact, the next to last paragraph of this section, in specifically requiring the payment of tuition by those not accorded the privilege of free schooling, provides as follows:

"The board of education of a city, exempted village, or local school district may admit other persons to the public schools of its respective district upon the payment of tuition within the limitation of law."
(Emphasis added.)

Thus, the issue of the payment of tuition by children not "of the proper age" is well defined in the Revised Code.

In answer to your specific inquiry, therefore, I direct your attention to Section 3327.06, Revised Code, concerning the collection of tuition from non-resident pupils and the consequence of a failure to collect. That section provides as follows:

"When a pupil attends school, pursuant to section 3327.04 of the Revised Code, in a district other than the district in which he is a school resident, tuition for such attendance shall be credited and paid in the manner provided in section 3317.08 of the Revised Code.

"When the board of education of a city, exempted village, or local school district admits to the schools of its district any non-resident pupil for whose attendance tuition is not an obligation of the board of the district of the pupil's residence, such board shall collect tuition, for the attendance of such pupil, from the parents of the pupil and the amount of tuition collected shall be not more nor less than the amount computed in

the manner prescribed by section 3317.08 of the Revised Code.

"If a board admits to the schools of its districts any nonresident pupil for whose attendance tuition is not an obligation of the board of the district of the pupil's residence, and fails to collect tuition as required by this section from the pupil's parents or guardian, the attendance of such pupil is unauthorized attendance, the membership of such pupil shall not be included in the membership figure used in the calculation of approved classroom units as provided by section 3317.05 of the Revised Code. The membership of such pupil shall be credited to the school district in which such pupil is a local school resident."
(Emphasis added.)

In considering Sections 3313.64 and 3327.06, supra, together, then, it becomes apparent that a board of education is not under a duty to pay another board for the schooling of a child under the age of six years. Section 3313.64, supra, implicitly requires a child under mandatory school age to pay tuition, and Section 3327.06, supra, makes it clear that the district of attendance must look to the parent or guardian for remuneration in the case of a non-resident pupil "for whose attendance tuition is not an obligation of the board of the district of the pupil's residence."

Therefore, it is my opinion and you are hereby advised that, pursuant to Section 3327.06, Revised Code, a board of education which admits a non-resident kindergarten pupil under the age of six years into its system must look to the child's parents or guardian for the collection of tuition. Under this section the district of the child's residence is not liable to the district of attendance for the payment of said tuition.