

Similarly, inmates of children's homes or orphan asylums attending school would also be counted. All such persons come within the definition and meaning of the word "pupil" ordinarily used.

Section 7794 provides for the enumeration of all unmarried youth, noting sex, between six and twenty one years of age, *resident within the district*, and not *temporarily there*. Here the designation "youth" is to be noted in distinction to the term "pupil" used in the phrase "aggregate days of attendance of pupils." *Pupil* is broader in meaning than *youth* is intended to be as used for enumerating purposes and *pupil* is the word generally and consistently used in other sections throughout the school laws, it being constantly used in designating persons actually under the care and instruction of a teacher.

The care taken by the legislature in section 7677 and 7678 G. C. to have tuition of children in county and other homes paid by the *districts* of their *last* residence, whether from other districts in the county in which the home is located or from districts of other counties of the state, plainly indicates that such are *enumerated youth* of the district of *last residence* but pupils of the school of the district where they are being taught.

As has been before said herein, to thus provide for the schooling of the inmates of county and other children's homes the effectiveness of the compulsory education laws is secured although to count such children in the aggregate days of attendance affects to some extent the distribution of the funds apportioned by the auditor of the county in which these homes are located to the advantage of the district where such inmates are taught. However, the effect on the distribution of funds is slight. To distribute funds on the "aggregate days of attendance of pupils" places a reward, so to speak, on regular attendance at every school by thus crediting to the district having the most regular attendance the maximum amount of the funds so distributed according to section 7600 G. C.

Therefore, your first question must be answered in the affirmative. It is the opinion of this department that pupils in a school coming from a county, semi-public or district children's home are to be counted in the "aggregate days of attendance of pupils" in the schools of the district in which such home is located. Also your second question, for the same reasons, must be affirmatively answered. Although residents of another state attending Ohio schools are not enumerated *youth* yet they are pupils of the schools attended under the ordinary meaning of that term as used in the law.

Respectfully,

JOHN G. PRICE,
Attorney General.

1403.

MUNICIPAL COURT OF PORTSMOUTH—SECTION 1579 463 G. C. (108 O. L. 462) DOES NOT FIX COSTS IN CRIMINAL CASES—BY REFERENCE, COSTS SAME AS ALLOWED TO MAYORS AND JUSTICES OF PEACE IN SUCH CASES.

Section 5 of house bill 320 (Portsmouth Municipal Court Act, 1579-463, (108 O.L., 462) relating to the jurisdiction of such court, does not fix the costs in criminal cases. Such costs by reference are the same as the costs heretofore allowed in such cases to mayors and justices of the peace.

COLUMBUS, OHIO, July 3, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows:

"The 83rd General Assembly passed an act to establish a municipal court for the city of Portsmouth, known as H. B. 320, and is found on page 462 O. L., 108, Part 1.

Section 5 of this act prescribes the jurisdiction of this court as follows: 'In felonies the municipal court shall have the power which police courts and mayors in municipalities now have or may hereafter be given.'

Section 29 provides: 'The costs in said court * * * in criminal cases * * * shall be as fixed by law * * *.'

"Section 39 repeals sections 14719 and 14720 of the General Code. These sections provided for a police judge for that city.

"All other acts creating municipal courts specifically provide for taxing costs, except at Zanesville, which act is similar to the one above quoted.

Will you kindly advise if the section establishing jurisdiction also fixes the costs in criminal cases."

It is noted you inquire specifically if section 5 of house bill 320, establishing the jurisdiction of the Portsmouth municipal court "also fixes the costs in criminal cases" in that court.

As stated in your letter, section 5 (Sec. 1579-463 G. C.) relates to the criminal jurisdiction of the Portsmouth court. It deals with powers, that is, authority conferred and duties imposed, and does not purport in any way to relate to or deal with the matter of costs or fees.

That the idea of costs or fees is foreign to the subject of section 5, is apparent by reflection that section 29 (Sec. 1579-487 G. C.) of the act deals exclusively with costs.

As the courts of this state have held, costs so-called are regulated entirely by statute, and section 5 of the act has no relation to the fixing of costs, and your specific question would have to be answered in the negative; but through personal conference it is learned that the basis of your inquiry is a desire to know if the costs of the Portsmouth municipal court, in criminal cases, are "fixed by law" as referred to in section 29, and your question may be re-stated to be:

"Are the costs in criminal cases in the Portsmouth municipal court fixed by law, either in section 5 of the act creating such court or by any other related laws."

Section 5 has been considered and may be eliminated from further discussion and your attention is directed to other parts of the act, which is designated in 108 O. L., part 1, page 462, as sections 1579-459 et seq.

It will be advisable to consider sections 3, 5, 25, 29, and 34, which are subsections 461, 463, 483, 487 and 492.

Section 3 provides that the court shall have the same jurisdiction in criminal matters as theretofore had by the police court (mayor's court) of Portsmouth, Ohio, and justices of the peace for Wayne township.

Section 5 further relates to criminal jurisdiction, conferring jurisdiction in misdemeanors for violation of city ordinances, of which police courts and mayors

"now have or may hereafter be given jurisdiction. In felonies the municipal court shall have the powers which police courts and mayors in municipalities now have or may hereafter be given."

Section 25 relates to powers of the clerk, and in part provides:

"All costs, all fines collected for the violation of municipal ordinances * * * shall be paid into the treasury of the city of Portsmouth monthly."

Section 29 has been substantially quoted in your letter and provides that the costs in criminal cases shall be as fixed by law. As to this provision it may be observed in passing that the term "as fixed by law" must be held to mean as otherwise provided by law, as of itself standing alone it would be insufficient to authorize the taxation and collection of costs.

The subject to section 34 is the supersession of police and mayors' courts and courts of justices of the peace of Wayne township. This section also provides that the municipal court "shall have all their *powers and authority*, and all proceedings, judgments * * * subject to the jurisdiction of said police court and the justice of the peace * * * shall be turned over to the municipal court herein created;" Thus it clearly appears that the new court was intended to supplant the former courts referred to and to succeed to their functions and powers to the end that their work may be thereafter performed and carried on by the new court. It may be noted here that no part of the special court act specifically fixes the costs in criminal cases, but it is quite clear that the taxation and collection of such costs was contemplated, and that sections 14719 et seq. (authorizing the election of a police court judge) have been inoperative as to Portsmouth, no such judge having been there elected under these sections.

While the legislative expression here is not as definite as may be desired, yet considering the whole act, the intention seems reasonably clear to authorize the taxation and collection of the same costs fixed in the statutes relating to mayors and justices of the peace. Perhaps attention should be called to House Bill 294 (103 O. L., part 2, page (1203), where certain amendments were made to various fee sections.

Respectfully,

JOHN G. PRICE;
Attorney-General.

1404.

DISAPPROVAL, BONDS OF BAINBRIDGE VILLAGE SCHOOL DISTRICT
IN AMOUNT OF \$20,000.

COLUMBUS, OHIO, July 6, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

Re Bonds of Bainbridge Village school district in the amount of \$20,000 for the purpose of erecting and equipping an addition to the present school building, being 20 bonds of \$1,000 each—6 per cent.

GENTLEMEN:—The transcript for the above bond issue was disapproved by me in opinion No. 1338, rendered June 16, 1920. Since rendering the opinion just referred to, the Industrial Commission has repurchased the issue of bonds and the officer of the Bainbridge Village school district have submitted for my examination a corrected and supplemented transcript.

I have examined this new transcript and am still unable to approve the validity of said bond issue for the reason stated in paragraph one of opinion No. 1338 above referred to.

The transcript still fails to show that the preliminary and jurisdictional findings required by section 7625 G. C. were made by the board of education prior to submitting the question of issuing the bonds to the vote of the electors. No finding was made in the resolution referred to "that for the proper accommodation of the schools of