

**OPINION NO. 89-006****Syllabus:**

When, pursuant to R.C. 2151.355, a juvenile court commits a delinquent child to an out-of-state private residential facility, the cost of educating the child is paid with funds from the state subsidy provided in R.C. 2151.357; if such subsidy is insufficient, any remaining educational expense is to be paid by the court as provided in R.C. 2151.36.

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**To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, February 23, 1989**

I have before me your request for my opinion regarding payment of out-of-state educational costs by an Ohio child's school district of residence. Your letter indicates that the juvenile court has adjudicated the child a delinquent and ordered the child placed in a private residential treatment facility outside Ohio. Treatment in this facility includes in-house education services. You want to know whether the Ohio school district in which the child resided is responsible for paying the costs of educating the child.<sup>1</sup>

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<sup>1</sup> Your letter does not indicate that the child is entitled to special education services pursuant to R.C. Chapter 3323 and I assume for purposes of this opinion that these provisions do not apply.

In 1962 Op. Att'y Gen. No. 2938, p. 274, one of my predecessors had occasion to consider an almost identical question and held that:

Where, under division (B) of Section 2151.35, Revised Code, a juvenile court commits a child to a specialized school in another state, the court, under Section 2151.36, Revised Code, must itself pay expenses occasioned by the commitment and authorized by the court at the time of commitment, which expenses are paid out of funds appropriated to the court by the board of county commissioners under Section 2151.10, Revised Code; and pursuant to Section 2151.36, Revised Code, the court may order the parents, guardian, or person charged with the child's support to reimburse the court for such payments.

1962 Op. No. 2938 (syllabus). My predecessor came to this conclusion because he found no authority for the court to determine which school district should pay,<sup>2</sup> nor could he find any authority for the school district to make such payments independent of a determination by the court. The reasoning in 1962 Op. No. 2938 is both concise and persuasive. However, a number of statutory changes are apparent when the 1962 provisions are compared to their current counterparts. Therefore, I must reexamine my predecessor's conclusion in light of these changes.

The court's authority to determine which school district should pay the educational costs of a delinquent child is now found in R.C. 2151.357, which states:

In the manner prescribed by division (C)(2) of section 3313.64 of the Revised Code, *the court shall*, at the time of making any order that removes a child from his own home or that vests legal or permanent custody of the child in a person or government agency other than his parent, *determine the school district that is to bear the cost of educating the child*. Such determination shall be made a part of the order that provides for the child's placement or commitment.

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<sup>2</sup> In 1962, the court's authority to determine that a school district pay a child's educational expenses was limited to placements made pursuant to R.C. 2151.35(A), while out-of-state placements were authorized only in R.C. 2151.35(B). The statute, as quoted by my predecessor in 1962 Op. No. 2938, stated:

"...If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

"(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes. *The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs*. The decision of the court concerning the expense of the child's education shall be made a part of the order provided by this section;

"(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare, which has assumed the administration of child welfare, county child welfare board, or certified organization, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case...."

*Id.* at 275 (emphasis added).

Whenever a child is placed in a detention home established under section 2151.34 of the Revised Code or a juvenile facility established under section 2151.65 of the Revised Code, his school district as determined by the court shall pay the cost of educating the child based on the per capita cost of the educational facility within such detention home or juvenile facility. *Whenever a child is placed by the court in a private institution, school, residential treatment center, or other private facility, the state shall pay to the court a subsidy to help defray the expense of educating the child* in an amount equal to the product of the daily per capita educational cost of such facility and the number of days the child resides at the facility, provided that *such subsidy shall not exceed five hundred dollars per year*. The subsidy shall be paid quarterly to the court. (Emphasis added.)

Pursuant to R.C. 2151.357, the court shall determine the school district to bear the cost "at the time of making any order that removes a child from his home or that vests legal or permanent custody of the child..." (emphasis added); therefore, the school district determination now applies to any disposition within the court's authority. One of the dispositional options available to the court is the authority to commit a child to an out-of-state facility. R.C. 2151.355.<sup>3</sup> The court's authority to determine which school district should bear the educational costs of an out-of-state disposition implies a corresponding authority on the part of the school district to make such payments in response to the order, else R.C. 2151.357 is rendered meaningless. R.C. 1.47(D) ("[i]n enacting a statute, it is presumed that...[a] result feasible of execution is intended"). See generally *Waliga v. Bd. of Trustees of Kent State Univ.*, 22 Ohio St. 3d 55, 57, 488 N.E.2d 850, 852 (1986); *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105, 113 (1981) (power of a creature of statute may be fairly implied from an express power where it is reasonably related to the duties of the entity).<sup>4</sup>

Although R.C. 2151.357 appears to expand the situations in which the court may now determine which school district is to bear the cost, it also places certain limits on the court's discretion in this matter. For purposes of your question, the most important limitation is that placements in private facilities, in or out of state,

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<sup>3</sup> In pertinent part, R.C. 2151.355 states:

(A) If a child is found by the court to be a delinquent child, the court may make any of the following orders of disposition:

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(3) Commit the child to the temporary custody of any school, camp, institution, or other facility for delinquent children operated...by a private agency or organization, within or without the state that is authorized and qualified to provide the care, treatment, or placement required.... (Emphasis added.)

Both R.C. 2151.355 and R.C. 2151.357 were first enacted in 1969, as a part of a comprehensive legislative reorganization of R.C. Chapter 2151. See 1969-1970 Ohio Laws, Part II, 2040 (Am. Sub. H.B. 320, eff. Nov. 19, 1969). Although there have been subsequent amendments, the differences from the 1962 statute which I have just discussed were a result of the 1969 legislation.

<sup>4</sup> I note that the statutes governing education have also undergone numerous amendments since 1962 Op. No. 2938 was issued. Since a school district's authority to make payments can now be derived from R.C. 2151.357, I am not required to examine these statutes in this opinion. I express no opinion as to the continued validity of my predecessor's conclusion that there is no implied or express authority in the education statutes for a school district to pay out-of-state tuition.

shall be supported by a state subsidy rather than by school district funds.<sup>5</sup> The legislative history of R.C. 2151.357 indicates that this subsidy is intended to replace, rather than supplement, school district funds. As originally enacted in 1969, R.C. 2151.357 provided that whenever a child was placed in a facility "public or private, within or without this state, his school district as determined by the court shall pay...." 1969-1970 Ohio Laws, Part II, 2040 at 2066 (Am. Sub. H.B. 320, eff. Nov. 19, 1969). In 1970, this language was amended to provide that the school district, as determined by the court, would pay the educational costs of a child placed in a detention home or public school within the state; however, when the child was placed in a private facility, the state would pay the court a subsidy of up to \$500. 1969-1970 Ohio Laws, Part II, 1441 at 1442 (Am. S.B. 518, eff. July 16, 1970). By creating this dichotomy, the legislature clearly intended to exclude the educational costs of private facility placements from the financial responsibility of the school districts. The current language of R.C. 2151.357 describing the state subsidy for such placements is virtually identical to that enacted in 1970. Obviously, this subsidy, which is limited to \$500, is not intended to cover the entire cost of the child's education. Therefore, as did my predecessor in 1962 Op. No. 2938, I must turn to R.C. 2151.36, which governs the court's payment of expenses occasioned by a child's commitment. R.C. 2151.36 states, in pertinent part:

*Any expense ordered by the court for the care, maintenance, and education of dependent, neglected, abused, unruly, or delinquent children, or for orthopedic, medical or surgical treatment, or special care of such children under this chapter, except the part of the expense as may be paid by the state or federal government, shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge. The court shall not be responsible for any expense resulting from the commitment of children to any home, public children's services agency, private child placing agency or other institution, association, or agency, unless such expense has been authorized by the court at the time of commitment. (Emphasis added.)*

Funds for such costs are appropriated to the court by the county commissioners, pursuant to R.C. 2151.10. The provisions of R.C. 2151.36 remain substantially unchanged from those considered in 1962 Op. No. 2938 and I concur in the analysis presented there.

In light of the above, it is my opinion, and you are hereby advised that when, pursuant to R.C. 2151.355, a juvenile court commits a delinquent child to an out-of-state private residential facility, the cost of educating the child is paid with funds from the state subsidy provided in R.C. 2151.357; if such subsidy is insufficient, any remaining educational expense is to be paid by the court as provided in R.C. 2151.36.

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<sup>5</sup> I am aware that R.C. 2151.357 also states that the determination must be made "[i]n the manner prescribed by division (C)(2) of section 3313.64." See also *Christman v. Washington Court House School District*, 30 Ohio App. 3d 228, 231, 507 N.E.2d 384, 387 (Fayette County 1986) ("both the rule and the statute make it the court's duty to determine the school district that is to bear the cost. Juv. R. 34(C) sets forth the 'time' at which the court is to make the determination.... R.C. 2151.357 sets forth the 'specific manner'"). Only the provisions of R.C. 3313.64(C)(2) are incorporated into R.C. 2151.357. While the language of R.C. 3313.64(C)(2) limits the court in determining what district must pay the costs, I do not find that it limits the court's authority to award these payments to any placement within its dispositional authority. The provisions of R.C. 3313.64(C)(2) describe the manner of determining which school district must pay tuition. I find nothing in R.C. 3313.64(C)(2) which prevents making these payments to an out-of-state school. If such restraints exist elsewhere in R.C. Chapter 3313, see n.2 *supra*, the legislature has chosen not to apply them to court determinations made pursuant to R.C. 2151.357.