

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

1972 Op. Att'y Gen. No. 72-030 was overruled in part  
by 1980 Op. Att'y Gen. No. 80-095.

**OPINION NO. 72-030****Syllabus:**

When the juvenile division of the common pleas court places a child in the temporary custody of a county children services board and that board places the child in a foster home located in a school district other than that in which the child's parents reside, the school district in which the parents reside is not obligated to pay tuition to the school district in which the foster home is located and in which the child attends school. (Opinion No. 66-077, Opinions of the Attorney General for 1966, overruled to the extent indicated.)

---

**To: John E. Moyer, Erie County Pros. Atty., Sandusky, Ohio**  
**By: William J. Brown, Attorney General, April 14, 1972**

Your request for my opinion poses the following questions:

"1. Where the Juvenile Division of the Common Pleas Court places a child in the temporary custody of the County Children Services Board and that board places the child in a foster home located in a school district other than where the child's parents reside, is the school district in which the parents reside obligated to pay tuition to the school district in which the

foster home is located and in which the child attends school?

"2. If the answer to the preceding question is in the affirmative, does the obligation to pay tuition for such child shift to a third school district if and when the parents subsequently take up actual residence in such district?"

The powers and the duties of a county children services board, with respect to children committed to its custody by a juvenile court, appear in Section 5153.16, Revised Code, which provides in pertinent part as follows:

"The county children services board shall, subject to the rules, regulations, and standards of the department of public welfare, have the following powers and duties on behalf of children in the county deemed by the board or department to be in need of public care or protective services:

"\* \* \* \* \*"

"(C) To accept custody of children committed to the board by a court exercising juvenile jurisdiction;

"\* \* \* \* \*"

"(H) To find foster homes, within or outside the county, for the care of children,\* \* \*;

"\* \* \* \* \*"

The right to receive a free public school education is, of course, guaranteed to children who attend such a public school within the school district in which they reside. There is, however, a special provision as to those inmates of a county children's home who resided in another school district at the time of placement in such home. Although they may attend school within the district in which the home is located, tuition must be paid by the district in which they resided prior to placement. Section 3313.64, Revised Code, 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, \* \* \*. School residents shall be all youth who are children or wards of actual residents of the school district. District of school residence shall be the school district in which a school resident is entitled to attend school free. Inmates of the proper age of county, semipublic, and district children's homes 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. The district of school residence shall pay tuition \* \* \*."  
(Emphasis added.)

In numerous instances my predecessors have given the language of the above Section, "wards of actual residents of the school district", a liberal interpretation so as to include the children of foster parents, and have concluded that such wards are entitled to a free public school education in the district in which the foster home is situated, even though the natural parents reside in another district. In Opinion No. 1581, Opinions of the Attorney General for 1960, one of my predecessors, after a review of several previous Opinions, said:

"In light of these previous opinions of the Attorney General, I conclude that the term 'ward' as used in Section 3313.64, should be given a liberal construction to effectuate the public policy of this state in providing a free education for all its children. It appears, therefore, that a child who has been committed to a state institution for the feeble minded is the ward as that term is used in Section 3313.64, Revised Code, of the superintendent of the state institution or of his foster parents if the child has been placed in the custody of a foster home by the Department of Mental Hygiene and Correction. This entitles such child to a free education in the school district in which the state institution or the foster home is located."

See also Opinion No. 1140, Opinions of the Attorney General for 1918; Opinion No. 106, Opinions of the Attorney General for 1927; Opinion No. 130, Opinions of the Attorney General for 1929; Opinion No. 3594, Opinions of the Attorney General for 1931; Opinion No. 4864, Opinions of the Attorney General for 1932; Opinion No. 2045, Opinions of the Attorney General for 1933; Opinion No. 3353, Opinions of the Attorney General for 1941; Opinion No. 2656, Opinions of the Attorney General for 1953; Opinion No. 2044, Opinions of the Attorney General for 1961; Opinion No. 545, Opinions of the Attorney General for 1963. The general effect of all those Opinions is that when a child resides permanently with an actual resident of a school district who stands in loco parentis, the child may attend the public schools of such district without the payment of tuition, even though his actual parents reside in some other school district. This is consistent with my statement in a recent Opinion: "The residence of the parent with whom the child resides will determine the child's 'school residence'". (Emphasis added.) Opinion No. 71-022, Opinions of the Attorney General for 1971.

Your letter calls attention to Opinion No. 2044, supra. That Opinion is concerned with the special provision of Section 3313.64,

supra, under which tuition must be paid by the district of prior school residence for inmates of a county children's home who now attend school in the district in which the home is located. The Opinion holds that when such inmates are transferred to foster homes, tuition must still be paid by the school district in which they resided prior to placement in the county home. While I have considerable doubt as to the soundness of that holding, limited as it is to inmates of county children's homes, the issue is not really presented in your case since it appears that the children involved here were never inmates of such a home.

You refer also to Opinion No. 66-077, Opinions of the Attorney General for 1966, and you ask that its holding be reconsidered. I agree with your conclusion that that Opinion misread the narrow holding of Opinion No. 2044, supra. In Opinion No. 66-077, supra, my predecessor took the position that the district of the child's prior school residence must always pay tuition to the district in which he now resides in a foster home and attends school, even though he was never an inmate of a county children's home.

In view of the foregoing, an answer to your second question is unnecessary.

In specific answer to your first question it is my opinion, and you are so advised, that when the juvenile division of the common pleas court places a child in the temporary custody of a county children services board and that board places the child in a foster home located in a school district other than that in which the child's parents reside, the school district in which the parents reside is not obligated to pay tuition to the school district in which the foster home is located and in which the child attends school. (Opinion No. 66-077, Opinions of the Attorney General for 1966, overruled to the extent indicated.)