

OPINION NO. 89-092**Syllabus:**

When a juvenile court commits a neglected child to the temporary custody of a children services board, R.C. 2151.357 requires the court to determine, in the manner prescribed by R.C. 3313.64(C)(2), the school district that is to bear the cost of educating the child. Where the children services board, retaining legal custody of the child, places the child to live with a relative in another state which is a party to the Interstate Compact on the Placement of Children, R.C. 5103.20, art. V(A) imposes upon the children services board, as the sending agency, the financial responsibility for assuring payment to the receiving state of the cost of the child's out-of-state public school tuition. In the absence of statutory direction as to the manner in which payment for the receiving state's tuition will be made by the responsible school district, as determined in the manner prescribed by R.C. 3313.64(C)(2), the juvenile court may, in the exercise of its discretion, direct the manner in which payment will be made.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1989

I have before me your opinion request concerning the responsibility for payment of tuition costs for a child who has been committed to the temporary custody of the county children services board and who has been placed by the board with a relative who lives outside of Ohio. Since your letter does not mention that the child is in need of special education, I will not address that situation. You specifically ask:

- (1) Does ORC 5103.20, read in pari materia with ORC 3313.64, either mandate or permit the payment of out-of-state public school tuition by the applicable school district identified under ORC 3313.64? and
- (2) What effect, if any, would the existence of an Ohio Juvenile Court Order specifying that educational costs shall be borne by a particular Ohio school district have on your answer to the above question?

Before addressing your specific questions, I must discuss one of the determinative factors in the situation about which you ask. Your question hypothesizes that the child has been adjudicated to be a neglected child and has been placed in the temporary custody of the county children services board pursuant to an order of the juvenile court. Where a court has determined that a child is a neglected

child, R.C. 2151.35 requires that a separate dispositional hearing be held. R.C. 2151.35(B)(3) states in part:

The court may make any order of disposition that is set forth in [R.C.2151.353]....If the child is not returned to his own home, *the court shall determine which school district shall bear the cost of his education* and may fix an amount of support to be paid by the responsible parent or to be paid from public funds. (Emphasis added.)

R.C. 2151.353(A) empowers the court to make the following orders of disposition:

- (1) Place the child in protective supervision;
- (2) *Commit the child to the temporary custody¹ of a public children services agency²*, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;

....
(F) Any temporary custody order issued pursuant to [R.C. 2151.353(A)] shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to [R.C. 2151.415], the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section. (Emphasis and footnotes added.)

Thus, it is pursuant to the authority and procedure set forth in R.C. 2151.353 that a juvenile court may commit a neglected child to the temporary custody of the county children services board.

Juv. R. 34(C), concerning dispositional hearings, such as those conducted under R.C. 2151.35(B), states in pertinent part: "After the conclusion of the hearing,

¹ R.C. 2151.011(B)(13) defines the term "temporary custody," as used in R.C. Chapter 2151, to mean, "*legal custody* of a child who is removed from his home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement" (emphasis added). Pursuant to R.C. 2151.011(B)(10), the term "legal custody" means:

a legal status which vests in the custodian the right to have physical care and control of the child and to determine where and with whom he shall live, and *the right and duty* to protect, train, and discipline him and *to provide him with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities*. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court. (Emphasis added.)

The term "residual parental rights, privileges, and responsibilities" means:

those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not necessarily limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

R.C. 2151.011(B)(11).

² R.C. 2151.011(B)(26) defines a "public children services agency" as including a children services board.

the court shall enter an appropriate judgment within seven days....*If the child is not returned to his own home, the court shall determine which school district shall bear the cost of his education* and may fix an amount of support to be paid by the responsible parent, or to be paid from public funds." (Emphasis added.) Similarly, R.C. 2151.357 states in pertinent part:

In the manner prescribed by [R.C. 3313.64(C)(2)], the court shall, at the time of making any order that removes a child from his own home or that vests legal or permanent custody³ 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. (Emphasis and footnote added.)

Thus, as directed by R.C. 2151.35(B)(3) and pursuant to Juv. R. 34(C) and R.C. 2151.357, at the time the court makes an order vesting legal custody of a child, who has been adjudicated to be neglected, in a children services board, the court will make a determination as to which school district shall be responsible to bear the costs of educating the child; such determination will be incorporated in the court's dispositional order.

R.C. 2151.357 requires the court to determine the school district responsible for a child's educational costs "[i]n the manner prescribed by [R.C. 3313.64(C)(2)]," which states:

Except as otherwise provided in division (C)(2)(d) of this section, if the child is in the permanent or legal custody of a government agency or person other than the child's parent, tuition shall be paid by:

(a) The district in which the child's parent resided at the time the court removed the child from his home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first; or

(b) If the parent's residence at the time the court removed the child from his home or placed him in the legal or permanent custody of the person or government agency is unknown, tuition shall be paid by the district in which the child resided at the time he was removed from his home or placed in legal or permanent custody, whichever occurred first; or

(c) If a school district cannot be established under division (C)(2)(a) or (b) of this section, tuition shall be paid by the district determined as required by section 2151.357 of the Revised Code by the court at the time it vests custody of the child in the person or government agency.

(d) If at the time the court removed the child from his home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, was not known to reside in this state, tuition shall be paid by the district determined under division (D) of section 3313.65 of the Revised Code as the district required to pay any tuition while the parent was in such facility or placement.

In 1989 Op. Att'y Gen. No. 89-006, I discussed the court's duty under R.C. 2151.357 to make its determination, "[i]n the manner prescribed by division (C)(2) of section 3313.64 of the Revised Code," of the school district responsible for the costs of educating a child, as follows:

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

³ See n. 1, *supra* (discussing definition of "legal custody").

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...the legislature has chosen not to apply them to court determinations made pursuant to R.C. 2151.357.

Op. No. 89-006 at 2-26 n.5. Thus, in making its determination of the school district responsible for the payment of the cost of educating a child under R.C. 2151.357, a court is limited to the alternatives set forth in R.C. 3313.64(C)(2). Further, it appears that R.C. 3313.64(C)(2) does not limit the court's authority under R.C. 2151.357 to determine to whom such educational costs are payable.

In the situation you pose, the children services board, having received temporary custody of the child pursuant to court order, placed the child to live with a relative out of state.⁴ Pursuant to R.C. 5153.16(C), a county children services board is required to "[a]ccept custody of children committed to the board...by a court exercising juvenile jurisdiction." Further, pursuant to R.C. 5153.16(D), the board is under a duty to:

Provide such care as the board...considers to be in the best interests of any child the board...finds to be in need of public care or service; such care shall be provided by the board...*by its own means or through other available resources*, in the child's own home, in the home of a relative, or in a certified foster home, receiving home, school, hospital, convalescent home, or other institution, public or private, *within or outside the county or state....* (Emphasis added.)

Thus, once a child has been placed in the temporary custody of a children services board by order of a juvenile court, the board is authorized, pursuant to R.C. 5153.16(D), to take the action you propose, i.e., placing the child in the home of a relative outside the state.

As stated in your opinion request, you question whether R.C. 5103.20, part of the Interstate Compact on the Placement of Children, allows for or mandates the payment of out-of-state public school tuition in the circumstances you describe. R.C. 5103.20 states in pertinent part:

Article III. Conditions of Placement.

(A) No *sending agency* shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.⁵ (Emphasis and footnote added.)

⁴ You have not asked and I am not addressing a situation where the juvenile court itself places the child in the custody of a relative who lives out of state.

⁵ R.C. 5103.20, art. VIII provides that the compact shall not apply to:

(A) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(B) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

As used in the compact, the term "sending agency" is defined as: "a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state." R.C. 5103.20, art. II(B). Further, R.C. 5103.20, art. II(D) defines "placement" as meaning:

the arrangement for the care of a child in a family free or boarding home, or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic, or any institution primarily educational in character, and any hospital or other medical facility.

Thus, in the situation about which you ask, it is the county children services board, acting under its statutory authority, R.C. 5153.16(D), which places the child outside the state. The board itself, therefore, qualifies as a "sending agency," for purposes of the Interstate Compact on the Placement of Children. Assuming that none of the limitations set forth in R.C. 5103.20, art. VIII, *see n. 5, supra*, apply to the situation about which you ask, the board's arrangement for the care of the child with a relative in another state which is party to the compact qualifies as a "placement," for purposes of the compact.

Specifically concerning financial responsibility for a child placed pursuant to the compact, R.C. 5103.21 states:

Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of Article V of [R.C. 5103.20]. However, in the event of parental or complete default of performance thereunder, the provisions of laws fixing responsibility for the support of children also may be invoked.

R.C. 5103.20, art. V states in pertinent part:

(A) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. *The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement....*

(B) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency. (Emphasis added.)

Thus, pursuant to R.C. 5103.20, art. V, the sending agency has "financial responsibility for support and maintenance of the child during the period of the placement." As noted in your opinion request, the question arises as to whether the out-of-state public school tuition costs of a child, who has been committed to the temporary custody of a children services board and who has been placed by the board in a residence out of state, are included in the term "support and maintenance," for purposes of R.C. 5103.20.

The words "support and maintenance," as used in R.C. 5103.20, are not defined by statute. I note, however, that there is specific statutory provision for a juvenile court to make certain determinations regarding the support of a child who has been committed pursuant to R.C. Chapter 2151. R.C. 2151.36 states in part:

When a child has been committed as provided by this chapter, the juvenile court may make an examination regarding the income of the

parents, guardian, or person charged with the *child's support*, and may then order that the parent, guardian, or person pay for the care, maintenance, and *education* of the child and for expenses involved in providing orthopedic, medical or surgical treatment for, or special care of, the child. The court may enter judgment for the money due and enforce the judgment by execution as in the court of common pleas.

....

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 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.)

Thus, the court is authorized to inquire as to the income of the person "charged with the child's support," and may, based on such information, order such person to pay certain expenses, including that for education, leading to the conclusion that educational costs are part of such person's obligation to "support" the child.

Further, in the situation you pose, the children services board has been given temporary custody of the child pursuant to court order. As discussed above, R.C. 2151.011(B)(13) defines temporary custody as a form of legal custody, defined in R.C. 2151.011(B)(10), as including the right and duty to provide the child with "food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities."⁶ Because the children services board has legal custody of the child, it is under a duty to provide for the child's education.

Pursuant to R.C. 5103.20, art. I, the purpose of the compact is to promote cooperation among the party states in the interstate placement of children in order to provide maximum opportunity for appropriate and desirable placement and care of the child. The compact, thus, appears to be directed at establishing requirements and limitations between the sending agency and the receiving state, but does not affect the rights, responsibilities, and obligations of the sending agency with respect to persons, agencies or other entities within the state from which the child is sent, as governed by the laws of that state. R.C. 5103.20 merely operates to make the sending agency financially responsible to the receiving state for support and maintenance of a child who is placed by the sending agency in the receiving state.

As discussed above, in the juvenile court's order placing the child in the temporary custody of the children services board, the court makes a determination, as required by R.C. 2151.357, as to which Ohio school district is responsible for the payment of the costs of educating the child. So long as such order remains, it places responsibility for the educational costs of the child on the school district as determined "[i]n the manner prescribed by [R.C. 3313.64(C)(2)]." If the children services board placed such a child with a relative within the state, the educational costs required to be paid by the school district responsible for the child's educational costs, as determined by the court, would be paid in accordance with the mechanism provided in R.C. 3313.64. There is, however, no corresponding statutory scheme governing the procedure for making such payment to an out-of-state school district. I find nothing in R.C. 5103.20 which would affect a determination of the responsible school district as made by a juvenile court pursuant to R.C. 2151.357. Rather, R.C. 5103.20 merely enables the receiving state to look to the sending agency, in the situation you pose, a county children services board, for financial responsibility for the costs of the child's maintenance and support, including the out-of-state public

⁶ I am assuming for purposes of this opinion, that in the situation about which you ask the natural parent has no residual responsibilities affecting the responsibility to provide for the child's education.

school tuition charged by the receiving state. Whether the responsible school district is to make payments to the receiving state or to the children services board is a matter which is not directed by statute. The juvenile court may, therefore, in the exercise of its discretion, determine to whom such payments may be made. See *generally* Op. No. 89-006.

It is, therefore, my opinion, and you are hereby advised, that when a juvenile court commits a neglected child to the temporary custody of a children services board, R.C. 2151.357 requires the court to determine, in the manner prescribed by R.C. 3313.64(C)(2), the school district that is to bear the cost of educating the child. Where the children services board, retaining legal custody of the child, places the child to live with a relative in another state which is a party to the Interstate Compact on the Placement of Children, R.C. 5103.20, art. V(A) imposes upon the children services board, as the sending agency, the financial responsibility for assuring payment to the receiving state of the cost of the child's out-of-state public school tuition. In the absence of statutory direction as to the manner in which payment for the receiving state's tuition will be made by the responsible school district, as determined in the manner prescribed by R.C. 3313.64(C)(2), the juvenile court may, in the exercise of its discretion, direct the manner in which payment will be made.