

may release only the obligation to repay that portion of those moneys which represents the receipts of tax levies made for strictly county purposes.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3649.

BOARD OF EDUCATION—MAY ESTABLISH SCHOOL AT A PRIVATE INSTITUTION FOR TUBERCULAR CHILDREN IN OR OUTSIDE THE SCHOOL DISTRICT—WHERE BOARD NEGLECTS TO ACT, BECOMES DUTY OF SPONSORS OF HOME TO PROVIDE SUCH EDUCATION.

SYLLABUS:

1. *By authority of section 7644-1, General Code, the board of education for a city school district may establish a special elementary school for the resident youth of school age who are afflicted with tuberculosis, either within or without the school district.*

2. *In the event a private home for tubercular contact children, residents of a city school district, is established outside the boundaries of the district, and the board of education of the city school district fails or refuses to establish a school at said home, or provide educational advantages for the children of said home, it is the duty of the sponsors of the home to provide for the education of the children in the said home.*

COLUMBUS, OHIO, October 9, 1931.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“A private individual purchased a building outside the school district of Columbus, said building to be used for the purpose of restoring children with tubercular tendencies to health. All of these children are residents of the city of Columbus but are temporarily placed in this home until such time as their health is restored by treatment there. This institution is being financed by private individuals.

Can the city of Columbus legally expend funds to hire a teacher to teach these children, now located outside the Columbus City School District?”

I am advised that the home to which you refer in your inquiry, is located outside the limits of an incorporated city or village. It is in one of the school districts of the Franklin County School District.

While it is not called a children's home or orphan asylum but is, on the other hand, maintained more in the nature of a private sanitarium, I am of the opinion that it has all the characteristics of a private children's home and may be classed as such, as the term “private children's home” is used in Section 7681, General Code. Said Section 7681, General Code, reads in part, as follows:

"The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, * * * The board of education may admit the inmates of a private children's home or orphan asylum located in the district, with or without the payment of tuition fees, as may be agreed upon; provided any child who is an inmate of such a home or asylum and previous to admission was a resident of the school district in which such home or asylum is located shall be entitled to free education; and provided, any such inmate who attends the public schools was prior to admission to such home or asylum a resident of another school district of the state of Ohio and a tuition fee is charged, the same method of reimbursement shall be followed as is provided in sections 7677 and 7678; * * *."

Sections 7677 and 7678, General Code, referred to in the above statute, have to do with the cost of educating inmates of public or semi-public children's homes. It is there provided that the cost of educating those children, when they attend school in the district where the home is located, shall be charged back to the district of their residence before admission to the home.

It will be seen, therefore, that if the children in the home, about which you speak, were admitted to the schools of the district in which the home is located, and a tuition fee were charged, the city school district of the city of Columbus where these children were residents before being placed in this home would be required to reimburse the district where the home is located, for the amount of this tuition.

The board of education of the district where this home is located is not required, however, to admit these children into its schools. This has been held by the Supreme Court in the case of *State ex rel Methodist Children's Home Association of Worthington v. Board of Education of the Worthington School District of Franklin County*, 105 O. S., 438. It was there held:

"The board of education of a district wherein is located a private children's home is not required by the provisions of Section 7681, General Code, to admit to the schools of such district children who are inmates thereof who are not the children, wards or apprentices of actual residents of such district."

If such children are admitted, however, to the schools of the district where a home of this nature is located, the Supreme Court has held in the case of *State ex rel. King, Prosecuting Attorney v. Sherman, County Auditor*, 104 O. S., 317, that the district of residence of the child before admission to the home must pay any tuition charge that may be made for said children. The holding of the Supreme Court in the above case is stated in the syllabus, as follows:

"Where children of school age, inmates of a private children's home or orphan asylum, have attended the public schools of the school district in which such home or asylum is located, such school district is entitled to recover from another district in the state of Ohio where such children had a residence immediately prior to becoming inmates of such home or asylum the expense of such attendance based upon the average per capita cost of the elementary schools of the district where such home is located, not including improvements and repairs."

I understand the children in this particular home do not consist of children with pronounced or advanced cases of tuberculosis, but only those with tubercular tendencies or what are sometimes termed "tubercular contact" cases. Even so, however, it is very probable that the school district where the home is located would not care to admit those children to its schools, and under the ruling of the Supreme Court, they would not be required to.

In any event, the cost of educating these children would, and should fall on the board of education of the city school district of the city of Columbus, where they were residents prior to their admission to this home. The question therefore arises as to how educational advantages may be furnished by the city school district and whether or not the city school district may be required, under the circumstances, to furnish such advantages. Section 7644-1, General Code, provides as follows:

"The Board of Education in any city school district may establish such special elementary schools as it deems necessary for youth of school age who are afflicted with tuberculosis, and may cause all youth, within such district, so afflicted, to be excluded from the regular elementary schools, and may provide for and pay from the school funds, the expense of transportation of such youth to and from such special schools."

It will be observed from the terms of the statute that the board of education in a city school district which desires to establish a school such as is mentioned in the statute, is not limited as to the location of that school.

The general authority extended to boards of education to establish schools is contained in Section 7620, General Code, which provides in part, as follows:

"The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, * *."

In my opinion, Section 7644-1, General Code, supra, when read in the light of the authority extended to boards of education by Section 7620, General Code, is broad enough to permit the establishment of a school for children afflicted with tuberculosis, including children with merely tubercular tendencies either within or without the school district. See *State ex rel. Clark et al. v. Board of Education*, 11 O. A., 146.

The terms of the statute, however, are not mandatory and whether or not such a school is established, is purely within the discretion of the board of education of the city school district.

If the board of education fails or refuses to establish a school at an institution of the kind here under consideration, it becomes the duty of the institution itself, to furnish educational advantages for the children which it has taken under its care.

I am therefore of the opinion, in specific answer to your question, that the board of education of the Columbus City School District may legally establish a school at the home to which you refer, and may lawfully expend the school