

Note from the Attorney General's Office:

1966 Op. Att'y Gen. No. 66-077 was overruled by
1972 Op. Att'y Gen. No. 72-030.

OPINION NO. 66-077**Syllabus:**

When a county child welfare board assumes control of a school age child and such child is placed by the board in the county children's home or in a foster home, the child's district of school residence prior to the board's assumption of control must pay tuition to another school district in which the child subsequently attends school.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio
By: William B. Saxbe, Attorney General, April 19, 1966

I have before me your request for my opinion. The questions raised require me to make certain conclusions concerning placement of the financial responsibility for the public education of children placed in "foster homes" by the Child Welfare Board. Your request letter indicates that there have been certain instances where school boards have questioned their obligation to educate or to pay tuition to other boards for the education of these children.

Your questions read as follows:

"1. In situations under Section 2151.35 Ohio Revised Code, paragraph B where the court grants temporary or permanent custody to the child welfare board, does the court also have jurisdiction to determine which school district must bear the cost of education as the court has if he places the child directly under paragraph A of the same section?"

"2. Where the Child Welfare Board, without an order from the court, by agreement or acquiescence assumes control of a child and places this child in a foster home in a different school district, does the school district wherein a parent lives have the obligation to pay the school district where the child attends tuition for his education?

"3. Assuming that the parents move from one district to another, does the obligation for tuition payments also move or is it settled on the original district of residence of a parent at the time of placement?"

Respectfully, I must decline to answer your first question because it asks me to define the powers of a court of this state and to do so would not in my opinion be a proper function of this office. Even so, I feel that the conclusions expressed herein will adequately resolve the problems you present.

Your second and third questions raise issues previously considered by the then Attorney General in Opinion No. 2044, Opinions of the Attorney General for 1961, page 100. The syllabi of that opinion read as follows:

"1. The education in public schools of children who are inmates of county children's homes and who are placed by the homes with foster parents should, under Section 3313.64, Revised Code, be at the expense of the respective school districts in which such children were school residents at the time of placement in such homes.

"2. Where the legal residence of the parents of a child placed in a children's home can not be determined, the school residence of such child under Section 3313.64, Revised Code, is that of the district in which the child was found.

"3. Where an inmate of a county children's home is placed with foster parents residing outside of the school district in which the home is located, the school district in which the foster home is located may not refuse to provide schooling for such child, since Section 3313.65, Revised Code, provides that inmates of a county children's home shall have the advantages of the public schools; but the tuition required by Section 3313.64, Revised Code, must be paid."

It is stated at page 104:

"* * * I cannot believe that it would have intended the detailed system of sharing the cost of educating children placed in a county children's home to be circumvented by

such a simple stratagem as that of placing such children in foster homes. * * *

"* * * * *"

Your second question implies that the result might differ if control of the children is obtained by the child welfare board by means other than a court order. Opinion No. 2044, supra, applied the same rule to children committed by a court or other means, and I concur in this reasoning.

The latter portion of your second question inquires as to whether the school district where the parent lives at the time the child welfare board obtains control has the obligation to pay tuition. As a practical matter this probably would be the result in most cases. However, this would not be an accurate statement of the law. The 1961 opinion, supra, applying Section 3313.64, Revised Code, indicates the correct rule which may be stated, as applied to the facts you present, as follows.

When a county child welfare board assumes control of a school age child and such child is placed by the board in the county children's home or in a foster home, the child's district of school residence prior to the board's assumption of control must pay tuition to another school district in which the child subsequently attends school.

The answer to question two therefore must be qualified to the extent that the child's previous district of school residence must pay the tuition. This may or may not be where the parents live since the child may have been a "ward of an actual resident"; therefore, a school resident within the meaning of Section 3313.64, Revised Code.

The answer to your third question must also be qualified. As previously stated the child's district of school residence at the time the child welfare board assumes control of a child must pay tuition to the subsequent district. The previous school residence of the child is determinative and not the residence of the parents. Therefore, if the parents move this does not in any way affect previous school districts' obligation to pay tuition. (Opinion No. 2044, Opinions of the Attorney General for 1961, page 100, approved and followed).

It should be noted that these children are always entitled to a free public education. The problem is which school district is financially obligated for the tuition payments. This being true, school boards should never deny such children admission to the schools on the ground that their district is not liable for tuition. Problems of reimbursement may be resolved after admission and should not interfere with or delay a child's education.