Note from the Attorney General's Office:

1921 Op. Att'y Gen. No. 21-2495 was overruled by
1977 Op. Att'y Gen. No. 77-001.

be seen that the very purpose of the vital statistics act would be defeated in that such records would not be very apt to be correct and dependable. If they are not qualified to treat diseases generally, it does not seem possible that they can be physicians within the meaning of General Code section 210, above quoted, and further as a matter of fact the statutes of Ohio do not recognize them as physicians.

From these considerations and from the discussion of the osteopathic physician's power to sign a death certificate and the reasons therefor, it is the opinion of this department that those practicing a limited branch of medicine, as designated by statute, are not qualified to sign a death certificate.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2495.

SCHOOLS—FREE TO ALL RESIDENT YOUTH OF DISTRICT BETWEEN AGES OF SIX AND TWENTY-ONE—MARRIED INFANT FEMALES UNDER AGE OF TWENTY-ONE MAY NOT BE COMPELLED TO ATTEND SCHOOLS OF DISTRICT UNDER COMPULSORY SCHOOL LAWS.

1. *Section 7681 G. C. provides that the schools of each district shall be free to all resident youth of the district between the ages of six and twenty-one, no distinction being made as to sex, nor as to graduation or other condition.*

2. *Married infant females under the age of twenty-one may attend the schools of the district of which they are residents, but may not be compelled to do so under compulsory school laws, though within compulsory school age.*

COLUMBUS, OHIO, October 24, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following questions:

> "(1) Is a board of education maintaining a first grade high school required to admit for further training graduates of such high school who desire to return in order to follow out a line of instruction which was not available before they completed their four years' work, such as commercial courses, for instance?
>
> (2) Does section 7681 G. C. guarantee the right of admission to school of a girl of compulsory school age who is married?
>
> (3) Can the compulsory school sections be enforced against a girl who, though married, is still of compulsory school age?"

Section 7681 G. C. 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. * * * But all youth of school age living apart from their parents or guardians and who

work to support themselves by their own labor, shall be entitled to attend school free in the district in which they are employed."

This section removes any doubt as to the intent and purpose of the law as to all youth between the ages of six and twenty-one years. To them the schools of each district are free and open, and they are privileged to avail themselves of any advantages such schools afford during that period. So long as a resident of a district is under the age of twenty-one years he may attend the schools of the district free. No distinction is made as to sex, nor as to graduation or other conditions.

The liberal policy of the school law as to the education of all residents of the state is further supplemented by section 7667 G. C., which provides that, subject to the control of the board of education, adults over twenty-one years of age may be admitted.

Your first and second questions therefore may be answered by saying that to all resident youth between six and twenty-one years of age the schools of each district are free.

Your third question involves the marriage relation, its incidents and responsibilities, and the compulsory school statutes.

Section 7794 G. C., 109 O. L. 394, in part, reads:

"An enumeration of all youth between five and eighteen years of age resident within the district, and not temporarily there, shall be taken in each school district annually during the four weeks ending on the fourth Saturday of May. * * *"

Old section 7794 G. C. had the word "unmarried" before youth, and fixed the ages of those enumerated as from six to twenty-one years. It is believed that this amended section of the school code was the only one using the word "unmarried" and that word has now disappeared in the amended law. The interest on the irreducible debt or the common school fund is distributed upon the enumeration under provisions of section 7600 G. C. Now married infants under eighteen years will be counted and distribution made accordingly.

It is presumed your second and third questions have been occasioned by the elimination of the word "unmarried" from section 7794 G. C., the change in the law of compulsory school age, and the change in the law relating to the ages of those enumerated.

The legal effect of marriage of those not yet of full age and the relative importance of that relation to the public schools must be somewhat considered. The marriage relation, it is perhaps unnecessary to observe, is well grounded in the broad principles of public policy and public morals. Marriage arises on contract. It is a much more ancient institution than is the public school. The building of a home and the rearing of children are perhaps the major reasons for its establishment and the zealous care the law has ever exercised in its maintenance and control.

In Courtright vs. Courtright, 36 Bull. 309, the court says:

"The right to marry is a natural one, recognized and regulated by the laws of all Christian countries."

Section 11181 G. C. reads:

"Male persons of the age of eighteen years, and female persons

of the age of sixteen years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage. Male persons under the age of twenty-one years, and female persons under the age of eighteen years must first obtain the consent of their fathers, respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians."

In Moser vs. Long, 8 O. App. 10, in commenting on the above statute, the court said:

"It will thus be seen that the legislature of the state of Ohio has to a very great extent modified the common-law rules upon this subject. The steady trend of legislation has been to prevent the marriage of young and immature persons. The age at which marriage may take place has been raised from the common-law rule of twelve years for a female and fourteen for a male. But a further protection has been afforded them by requiring that if marriage be desired under the age of majority, eighteen years for the female, and twenty-one for the male, the consent of the father or other proper guardian shall first be obtained.

* * * * * *

The plaintiff would have the undoubted right to repudiate, upon the ground of her minority, any other contract that she might have undertaken to enter into, except for necessaries, and we see no reason why she should be precluded, under the facts shown in this record, from repudiating the most important contract that she could possibly have undertaken to enter into."

In some states marriage emancipates the wife. It has also been held that widowhood does not return the widow to pupilage. However, this is not altogether the case in Ohio, where there exists statutory right to contract as a *feme sole* as is pointed out in Moser vs. Long, supra.

In 22 Cyc. 517, it is said:

"But it has been held that statutes which confer upon married women power to contract generally, * * * do not remove the disability of infancy from an infant married woman, but simply remove the disability of coverture, leaving the disability of infancy the same as if such statutes were not in force."

Again, in 26 Cyc. 827, it is said:

"In truth, whatever contractural elements marriage may contain, are important only in its inception; for once entered upon it becomes a relation rather than a contract, and invests each party with a status toward the other and society at large, involving duties and responsibilities which are no longer matter for private regulation but concern the commonwealth. And in this aspect marriage is a civil or social institution, *publici juris,* being the foundation of the family and the origin of domestic relations of the utmost importance to civilization and social progress; * * *."

It is in the concern of the state, the foundation of a family, the origin of domestic relations, that the answer to your questions really centers, and it would seem that this public right or interest in the marriage relation tran-

scends the effect of the compulsory educational laws and vitiates the right to compel an infant married woman to go to school, leaving it to her choice and her circumstances whether or not she shall use her right to attend.

The wife takes the husband's name and domicile. She leaves the guardianship of her parents for that afforded by her husband. He is entitled to her services and society. He is bound to support her out of his means or by his labor, and if unable to do so the wife must assist him so far as she is able. Section 7997 G. C. The husband and wife contract toward each other obligations of mutual respect, fidelity and support. Section 7995 G. C.

Great significance should not be attached to the omission of the word "unmarried" from the statutes providing for the enumeration of school youth. It may have been omitted for the purpose of compensating for the shortening of the period of the ages enumerated, which is between five and eighteen years, while before it was between six and twenty-one years. Certainly it has been assumed and so followed for so many years as to result in a rule of conduct or creation of a custom, not before questioned under compulsory educational laws, that when a woman marries she is no longer expected to be a pupil in a public school. Attendance of married people at school excited comment, and such conduct on the part of a married person only occurred occasionally and usually was on the part of the husband and not that of the wife. Nor can it be said that such was the result of the word "unmarried" in the law, for people generally were not aware of its presence in the statute. It was rather the result of the marriage relation, that being looked upon generally as a relation of such importance and responsibility as to render going to a public school impracticable or well-nigh impossible. This argument finds support in the way in which the law deals with the subject of marriage and the way in which the courts in all matters concerning the marriage relation speak of the same.

Section 7762 G. C., 109 O. L. 377, in part reads:

> "All parents, guardians or other persons who have the care of children who are of compulsory school age as indicated in section 7763, General Code, and who are not employed on age and schooling certificates shall instruct them, or cause them to be instructed, * * *."

Section 7763 G. C., 109 O. L. 378, in part reads:

> "Every parent, guardian or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year. * * *."

The compulsory educational laws impose upon parents, guardians, etc., the duty of keeping children and wards in the schools regularly so that such children and wards may have opportunity to secure the education intelligent citizens of a state need for the good of the government and for their own well being. Such laws are not directed at the youth of the state, except as the beneficiaries of their proper observance. It is only in cases where the parent or guardian admits inability to comply with the compulsory educational laws that a youth is regarded as one with whom the juvenile court will deal; that is, incorrigible or delinquent youth are disposed of by said court.

Infant married women are prospective parents. When they become such, when their children become of compulsory school age the compulsory educational laws apply to them. Prior to the time the children reach compulsory school age the infant wife and mother finds the rearing of her offspring, under ordinary circumstances, too absorbing of her entire attention to permit her attending public school.

As before stated herein, marriage of an infant female releases her from the guardianship of her parents. They are no longer entitled to her services are required to support her,—that becomes the duty of her husband or of herself, as the case may be.

Answering your third question, in consideration of the law and the reasons herein stated, the conclusion is reached that compulsory school laws do not apply to compel an infant married female to attend school, although if she choose to do so, she may, until such time as she becomes twenty-one years of age, attend the schools of the district of which she is a resident, free.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2496.

CHILDREN—ADOPTION LAW—WRITTEN CONSENT REQUIRED BY CHILD SOUGHT TO BE ADOPTED IF MORE THAN THIRTEEN YEARS OF AGE—WHEN WRITTEN CONSENT OF NATURAL PARENTS NECESSARY—OHIO PROBATE COURT WITHOUT JURISDICTION TO ACT IN ADOPTION PROCEEDINGS WHERE PARTIES IN INTEREST ARE NON-RESIDENTS OF STATE—THREE SPECIFIC CASES PASSED UPON.

1. *Under the provisions of section* 8025 *amended by House Bill No.* 91, 109 *O. L.* 177, *in adoption proceedings, written consents are required by child sought to be adopted if more than thirteen years of age; also by parent awarded custody of child by divorce decree together with the court's approval of such parent's consent.*

2. *When the natural parents of children sought to be adopted, are living and under no legal disability to assume parental custody over the same, their written consent to the adoption proceedings is a necessary statutory requirement of section* 8025 *G. C.*

3. *An Ohio probate court is without jurisdiction to act in adoption proceedings where parties in interest are non-residents of the state of Ohio, and a former decree unrevoked of a court of another state has awarded the custody of said minor to a foster parent. Such court originally determining such matters has a continuing jurisdiction in the same.*

COLUMBUS, OHIO, October 24, 1921.

HON. HARRY G. GRAM, *Probate Judge, Springfield, Ohio.*

DEAR SIR:—Your letter of recent date has been received reading as follows:

> "I would like to have your opinion as to the following matters pertaining to the new adoption law:
>
> (1) A woman secured a divorce from her husband in Montgomery county, was awarded the custody of their minor child, subject to the