

**OPINION NO. 1177**

**Syllabus:**

When, pursuant to Section 5153.16, Revised Code, a child

is placed by a county child welfare board in a foster home located in another county, such child is considered a legal resident of the county from which he was placed for the purposes of payment of cost of care under Section 5153.20, Revised Code.

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**To: Stanley E. Kolb, Warren County Pros. Atty., Lebanon, Ohio**  
**By: William B. Saxbe, Attorney General, June 30, 1964**

Your request for my opinion reads as follows:

"Will you please render an opinion on the following query:

"When another county places retarded children in foster homes, in Warren County and said children attend a school of the Warren County Child Welfare Board, is it an obligation of this other county to pay tuition to the Warren County Child Welfare Board if requested by said board?"

With regard to the power of a county to place children in need of public care in foster homes outside of the county, Section 5153.16, Revised Code, provides in part that:

"The county child welfare board shall, subject to the rules, regulations, and standards of the division of social administration, 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: \* \* \*

\* \* \* \* \*

"(H) To find foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county;"

This provides clear authority for the placement of a retarded child by one county in a foster home located in another county. The authority as to which county is obligated to bear the financial burden of sending this child to a school operated by the Warren County Child Welfare Board is not quite so clear. Section 5153.20, Revised Code, provides in part as follows:

"The cost of care furnished by the county child welfare board, by the board of county commissioners, or by the county department of welfare, to any child having a legal residence in another county, shall be charged to the county of legal residence.\* \* \*"

It is apparent that the county in which the child has established legal residence is the county obligated to bear the financial burden. The crucial problem to be resolved, therefore, is a determination of the county of legal residence.

If it can be established that the retarded child had legal residence in another county, then, in accord with Section 5153.20, supra, the cost of sending this child to a school of the Warren County Child Welfare Board must be paid by such county. However, due to the fact that the retarded child was placed in a foster home in Warren County, the question as to the county of legal residence becomes more difficult to resolve. Indeed, it is arguable that the child referred to in your letter did not have legal residence in another county, but to the contrary, by reason of being placed in a foster home in Warren County, had acquired legal residence in Warren County. It is difficult for me to accept this argument, which in effect places the financial burden on Warren County.

In Oakwood v. Dille, 109 Ohio App., 344, at page 349, it is stated:

"As in construing other statutes in the construction of legislation using the term 'residence', the courts look primarily to the legislative purpose as well as the context."

A statement of this same nature is found in 17 A American Jurisprudence, Domicile, Section 9, Footnote 14, page 202, which states:

"Residence has no fixed, exact meaning in the law, but may have a variety of meanings dependent upon the context in which it is employed as well as the subject matter involved and the purposes of such subject matter."

The above statements have been followed in Ohio. In State ex rel., Gibbs v. Martin, 143 Ohio St., 491, the Court held that, because of the language and purpose of the statute involved, children who were residents of Cleveland in the custody of the Cleveland Humane Society and who were placed in homes outside the district where they attended school, were pupils attending school outside the district of their legal residence.

Similar reasoning can be followed in the problem at hand. The substance of the language throughout Chapter 5153, Revised Code, and in particular Section 5153.20, supra, indicates to me that the General Assembly was evidently concerned with the equitable division of cost among counties in providing care for those children in need of public care. In this context it is difficult for me to believe that the General Assembly intended that the system of sharing the cost of caring for these children was to be circumvented by the simple stratagem of one county, under the authority of Section 5153.16 (H), supra, placing a child in a foster home located in another county and then, on the theory that the child no longer had legal residence in the former county, refusing to provide for any further expenses incurred in the care of the child. In effect, this would preclude the county in which the foster home is located from charging such expense to the former county and in my opinion would be contrary to the equitable sharing of costs contemplated by the General Assembly.

The above, however, should not be confused with the policy underlying Section 3313.64, Revised Code, for, in my opinion,

this section is designed to cover a situation different from that presented in your letter. The policy enunciated in Section 3313.64, supra, is that schools located within a particular school district shall be free to all children who are residents of that school district. The problem underlying this section is the determination of whether a child is a resident of a particular school district so that he shall be entitled to a free education in that school district. Several opinions have been written for the purpose of resolving this problem and one in particular, Opinion No. 1581, Opinions of the Attorney General for 1960, page 539, indicates that a child placed in a foster home would have the right to a free education in the school district in which the foster home was located. Seemingly, this is in conflict with my conclusion reached above, but on further investigation, it should be noted that Section 3313.64, supra, relates to public schools maintained by the respective school districts and not to special schools or facilities maintained by a county for the benefit of retarded children. In my opinion, the latter situation falls exclusively within Chapter 5153, supra, and in particular, Section 5153.20, supra, which in effect provides that the county of legal residence shall bear the cost of caring for children in need of public care. The cost of providing these special schools or facilities is that type of "cost of care" which is contemplated within Section 5153.20, supra.

It, therefore, is my opinion and you are accordingly advised that when, pursuant to Section 5153.16, Revised Code, a child is placed by a county child welfare board in a foster home located in another county, such child is considered a legal resident of the county from which he was placed for the purposes of payment of cost of care under Section 5153.20, Revised Code.