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PAYMENT OF SCHOOL EXPENSE OF CHILDREN WHO ARE INMATES OF COUNTY CHILDREN'S HOME OR ARE RESIDING WITH FOSTER PARENTS—§§3313.64—3313.65, R.C.

SYLLABUS:

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.

Columbus, Ohio, March 9, 1961

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo 2, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“May I have your opinion in the following matters:

“The Miami Children's Home (a county children's home) places children in its custody in foster homes (5153.01-F) from time to time. These children are received by the Children's Home by virtue of Juvenile Court order (5153.16-C, for permanent or temporary custody) or by way of providing emergency care (5153.16-G). The foster homes may be located in Lucas County or in some other county (5153.16-H).

“The children are placed in these foster homes after the homes have been investigated as to their suitability and the county pays regular rates to the foster parents to help provide for such children, except for certain special cases, and except that no money is provided for sending the children to school in the

district in which the foster parents reside. The Children's Home places the children in and removes them from the foster homes as it deems best; full custody at all times is retained by the Children's Home. The foster parents, however, do assume many parental characteristics and discharge many parental duties, including the providing of food, clothing and shelter and the care, supervision and training of the child.

"Quere: Are these children 'wards' of the foster parents with whom they are living, so as to be entitled to a free education as provided for in Section 3313.64 of the Revised Code, or are these children merely attending school outside the district of their legal residence, in which case the school district of their parents at the time they were received by the Children's Home is liable to pay their tuition? (State ex rel Gibbs et al., etc., vs. Martin, et al., etc., 143 OS 491)

"Some of the children received by the Children's Home are described by the Home as belonging to 'nomadic' parents, whose legal residence it is not possible to determine at the time they are received by the Home, or at any subsequent time.

"Quere: If these children are placed in foster homes, but are not considered wards of their foster parents, who is liable to pay their tuition?

"An out-of-county school board, presently providing education for four children placed in foster homes by the Miami Children's Home, has received no tuition in the past for the education of these children.

"Quere: If these children are not wards of their foster parents, may the out-of-county school board refuse to accept them?"

The question of financial responsibility for providing an education for children in the public schools has long been a thorny one. The statutory authority on this question is found primarily in Section 3313.64, Revised Code. This section reads, in part, as follows:

"The schools of each city, exempted village, or local school district shall be free to all school residents between six and twenty-one years of age, but the time in the school year at which beginners may enter upon the first year's work of the elementary school shall be subject to the rules and regulations of the board of education. School residents shall be all youth who are children or wards of actual residents of the school district. District of school residence shall be the school district in which a school resident is entitled to attend school free. * * * A child who is an inmate of a county, semipublic, or district children's home and

who at the time of placement in such home was a school resident of the district in which such home is located shall be entitled to an education at the expense of such school district; any other inmate of such home shall be educated at the expense of the school district in which he was a school resident at the time of placement.

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“The board of education of a city, exempted village, or local school district may admit other persons to the public schools of its respective district upon the payment of tuition within the limitation of law.”

In my recent Opinion No. 1581, Opinions of the Attorney General for 1960, I had occasion to review the law on this subject. The question presented in that opinion concerned responsibility for tuition payment for a child committed to a state institution for the feeble-minded and also the like responsibility when such a committed child is transferred from a state institution to a foster home. The syllabus of that opinion reads as follows :

“1. When a child is committed to a state institution for the feeble-minded the superintendent of such institution becomes, pursuant to Section 5123.03, Revised Code, the guardian of such child and the child as a ward of such guardian is entitled, pursuant to Section 3313.64, Revised Code, to a free education in the school district in which the state institution is located.

“2. The Department of Mental Hygiene and Correction has the authority, pursuant to Section 5123.12, Revised Code, to transfer a child committed to a state institution to a foster home and as the foster parents would have the care, custody and control of such child the child would be a ward of the foster parents and entitled pursuant to Section 3313.64, Revised Code, to a free education in the school district in which the foster home is located.”

This opinion included a review of earlier opinions, including, Opinion No. 1140, Opinions of the Attorney General for 1918, page 545; Opinion No. 106, Opinions of the Attorney General for 1927, page 160; Opinion No. 4864, Opinions of the Attorney General for 1932, page 1472; and Opinion No. 2045, Opinions of the Attorney General for 1933, page 1960. If I may paraphrase the essence of those opinions, they hold that the term “ward,” as used in Section 3313.64, Revised Code, should be liberally construed so as to permit a child to receive a free public education in the district in which he resides if the persons with whom he resides stand *in loco parentis* to him. For this reason, were the children about whom

you are concerned committed to any institution other than a county children's home I would have no hesitation in concluding that they would be entitled to a free public education in the school district in which they currently reside, whether such residence be actually in the institution or in a foster home designated by that institution.

I reached this conclusion notwithstanding what may appear to be the somewhat contrary language in *State, ex rel. Gibbs, et al., v. Martin, et al.*, 143 Ohio St., 491 (1944). While the court was concerned in that case with determining the financial responsibility for public education based on the residence of the child *prior* to its commitment, the reason for this view was apparently the terminology of Section 7595-1d, General Code. This section then read:

“Pursuant to law, a pupil may attend school outside his district of legal residence, and for such pupil, his board of education shall pay tuition not more nor less than that which shall be computed as follows * * *.”

However, the present version of that statute, Section 3317.08, Revised Code, now reads, in part, as follows:

“Pursuant to law, a pupil may attend school outside his district of school residence, and his board of education shall pay tuition in an amount not more than * * *.”

It will be noted that the term “district of legal residence,” found in the statute with which the court in the *Gibbs* case was concerned, differs from the present language of the analogous statute which now reads “district of school residence.” This unquestionably refers to the district of school residence found in Section 3313.64, *supra*. As this term has been interpreted in the various opinions of the Attorney General I have cited above, it includes children committed to institutions or placed in foster homes.

There is another element in the case you present, however, which distinguishes your situation from the general rule. That fact is that the children with whom you are concerned were committed to a county children's home. Section 3313.64, *supra*, specifically provides that responsibility for the payment of tuition for a public education for such children rests with the school district in which the children were school residents at the time of commitment, unless the children were school residents of the district in which the children's home is located, in which case no tuition would be charged. The question now is whether this express

exception to the general statutory rule covers the situation in which the children committed to a county children's home are subsequently properly placed in foster homes either within or outside of the school district in which the children's home is located. As the General Assembly was evidently concerned with the equitable division of the cost of providing public education, 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. This becomes especially apparent when it is realized that the foster homes in which the children are placed could be in the same school district as that in which the children's home is located so that although the cost of educating such children would be the same to that particular school district, the financial responsibility for it would be totally shifted.

Turning to your last three specific inquires, when children are committed to a county children's home and the legal residence of their parents cannot be determined, it would have to be presumed in the absence of any statutory authority that the school residence of the children in question is that of the district in which they were found, as there would be no other logical way in which to assign the responsibility for them to any particular district. While it is true that this financial responsibility is not expressly fixed by statute, such an interpretation would appear to provide the only feasible method of coping with the problem. Section 3313.65, Revised Code, leaves no doubt as to the absolute right of such children to a public education. Some school districts must bear this financial burden. I can only conclude that in such a case the relationships between the various school districts which may be concerned and the children involved should be examined and the financial responsibility for providing the children's education placed on that district which has the closest relationship to the children. Normally, in cases of children of "nomadic" parents, as you describe, the school district having the relationship would be the district in which the children were found by the juvenile authorities and this district should assume the cost of their education, at least until the actual residence of the parents can be determined.

As to the liability for payment of tuition for the public education of children placed in foster homes under these particular conditions, it is the same as if the children had remained in the county children's home and is, thus, specifically provided for in Section 3313.64, Revised Code. As

to whether an out-of-district school board could refuse to accept children in its school when the children are living in foster homes in such district under these circumstances, Section 3313.65, Revised Code, provides an express mandate for affording the opportunities of a public education to children in county children's homes. This statute reads, in part, as follows:

“The inmates of a county, semipublic, or district children's home shall have the advantage of the privileges of the public schools. * * *”

It would appear, therefore, that an out-of-district school board may not refuse to accept children living with foster parents at the direction of a county children's home as long as the proper payments for tuition, as required by Section 3313.64, Revised Code, are made.

Accordingly, it is my opinion and you are advised:

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.

Respectfully,
MARK McELROY
Attorney General