

**OPINION NO. 80-095****Syllabus:**

1. When a school is located in a private institution but is funded publicly and administered by the public school district in which the institution is located, it is a "public school" for purposes of R.C. 3313.64.
2. When a county agency has legal or permanent custody of a child, that child is considered to be a school resident of the district in which the agency is located. (1972 Op. Att'y Gen. No. 72-030, 1969 Op. Att'y Gen. No. 69-119, and 1959 Op. Att'y Gen. No. 92, p. 45 overruled to the extent that they conflict with R.C. 3313.64 as currently in effect.) If that child is an inmate at a private institution which is located in a school district that is not the district of school residence of the child, and if the child attends the public schools in the school district where the institution is located, then the district in which the county agency is located is required by R.C. 3313.64 to pay tuition for such child.
3. When a child lives at a private institution and the custody of the child remains with the child's parents, the child's district of school residence is the district of which his parents are actual residents, and that district is required by R.C. 3313.64 to pay tuition if the institution is located in another school district and the child attends the public schools in the school district where the institution is located. (1972 Op. Att'y Gen. No. 72-030, 1969 Op. Att'y Gen. No. 69-119, and 1959 Op. Att'y Gen. No. 92, p. 45 overruled to the extent that they conflict with R.C. 3313.64 as currently in effect.)
4. If a child's parents are known to reside out of state, and permanent or legal custody of the child has not been granted to another person or a government agency, R.C. 3313.64 requires that a private home or institution in which the child has been placed pay tuition to the school district where the child attends the public schools.

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**To: Anthony L. Gretlick, Williams County Pros. Atty., Bryan, Ohio**  
**By: William J. Brown, Attorney General, December 23, 1980**

I have before me your request for my opinion on several questions relating to R.C. 3313.64. In order to facilitate discussion, I have rephrased your questions as follows:

1. For purposes of R.C. 3313.64, what is the status of a school which is located within a private institution but which is administered and funded publicly?
2. If a court orders a child into the legal custody or permanent custody of a county agency, and the child is then placed at a private institution which is located in a school district other than the child's district of school residence, who is responsible for payment of tuition to that school district when the child attends the public school at the institution?
3. If a court does not make an order affecting custody of a child but merely places him on probation at a private institution which is

located in a school district other than his district of school residence, who is responsible for tuition when the child attends the public school at the institution?

4. Who is responsible for the payment of tuition under R.C. 3313.64 if the whereabouts of the parents are unknown or if they are known to be out of state?

You raise the questions in the context of the Starr Commonwealth for Boys, a resident treatment center for boys, which is located in the Lincolnview School District. According to the information provided, Starr Commonwealth offers its services for boys ages 14 through 17 who are having problems in the community. It is operated by a private, non-profit corporation which charges a daily fee for each child placed there. The educational program at Starr consists of the usual fundamental courses, but is structured to deal with the individual problems of the inmates there. The program is under the administration of the Lincolnview School District and is funded almost entirely from public sources.

R.C. 3313.64 sets out the general policy of providing free schooling to all school residents in Ohio. It also provides for payment of tuition when a child is not a school resident of the district whose schools he attends. That section reads, in pertinent part, as follows:

The schools of each city, exempted village, or local school district shall be free to all school residents between five and twenty-one years of age, but the time in the school year at which beginners may enter elementary school shall be subject to section 3321.01 of the Revised Code, and the rules of the board of education. Except as otherwise provided in this section, school residents are all children whose parents are actual residents of the school district. District of school residence is the school district in which a school resident is entitled to attend school free. The board may accept a child as a school resident for a period not to exceed sixty days, on the sworn statement of an adult resident of the district that he has initiated legal proceedings for custody of the child. Inmates of the proper age of children's homes created under section 5153.21 or 5153.36 of the Revised Code shall be admitted as described in section 3313.65 of the Revised Code. The board may admit the inmates of a private children's home or institution located in the district. Any inmate of such home or institution whose school district of residence is the school district in which such home or institution is located is entitled to free education. In the case of an inmate who attends the public schools and who is a school resident of another school district of the state, tuition shall be paid by that district as provided in section 3317.08 of the Revised Code. For any inmate who attends the public schools and who is not a school district resident of the state, the home or institution shall pay the tuition. (Emphasis added.)

The importance of your first question is readily apparent from the terms of this section since it is applicable only to children who attend the "public schools." If the school in question were determined to be "private," then the response to your other questions would be substantially altered.

"Public school" has been defined as "a school supported by taxation, and by money raised by the state." Quigley v. State, 5 Ohio C.C. 638, 657 (Cir. Ct. Lucas County 1891), aff'd, 27 Ohio L. Bull. 332 (1891). In 1933 Op. Att'y Gen. No. 1409, p. 1290, one of my predecessors dealt specifically with the distinction between private and public schools. In the second and third paragraphs of the syllabus, the opinion concluded:

"Common schools" or "public schools", as the terms are used in the Constitution of Ohio and the present statutory law of the state, are those schools or that system of schools established by laws

enacted by the legislature in pursuance of the constitutional mandate to establish a thorough and efficient system of common schools throughout the state administered by public agencies created by law and maintained from public funds raised by taxation or from school funds otherwise obtained.

A "private school" as distinguished from a "public school" is a school administered otherwise than by duly constituted public school authorities who are a part of the public school system of the state and supported from funds other than public school funds.

The school operated at Starr is supported almost entirely by public funds, and is administered by public school authorities. In 1976 Op. Att'y Gen. No. 76-055, I concluded that a board of education has the authority to provide for the education of children placed in a private institution at such institution. If the board of education is providing such education in a school at a private institution, the school must be considered a public school even though it is located on private property. It seems clear, therefore, that the school operated at Starr is a "public school" within the purview of R.C. 3313.64.

Your second question involves an application of R.C. 3313.64 along with R.C. 2151.357 and Juvenile Rule 34(C). R.C. 2151.357 reads, in pertinent part:

The court shall at the time of making any order which removes a child from his own home determine which school district shall bear the cost of educating such child. Such determination shall be made a part of the order which provides for the child's placement or commitment.

Juvenile Rule 34(C) reads as follows:

After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting such copy. In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation. If the child is not returned to his own home, the court shall determine which school district shall bear the cost of his education and may fix an amount of support to be paid by the responsible parent, or to be paid from public funds. (Emphasis added.)

Neither R.C. 2151.357 nor Juvenile Rule 34(C) states whether a juvenile court judge, when making an order which removes a child from his home, is bound to determine which school district must bear the cost of educating the child in accordance with R.C. 3313.64. However, it is fundamental that any determination made by a court must be in accordance with applicable law. See 1972 Op. Att'y Gen. No. 72-099. Further, R.C. 1.51 provides that if a conflict arises between a general and a specific provision, "they shall be construed, if possible, so that effect is given to both." In order to reconcile R.C. 2151.357 and Juvenile Rule 34(C) with R.C. 3313.64, I must conclude that the court is bound to make such an order in accordance with R.C. 3313.64 or any other section of the Revised Code which is applicable.

Prior to the adoption of Am. H.B. 811, 112th Gen. A. (1978) (eff. Aug. 21, 1978), R.C. 3313.64 provided that school residents "shall be all youth who are children or wards of actual residents of the school district." Under this section, it was generally held that the district of school residence was the school district in which a child's father or guardian resided at the time of a child's placement. See Adams v. Funk, 19 Ohio App. 2d 177, 250 N.E. 2d 619 (Hamilton County 1969); 1969 Op. Att'y Gen. No. 69-119; 1959 Op. Att'y Gen. No. 92, p. 45. In the latter opinion, one of my predecessors stated that custody status "is of no consequence in the consideration of a school district's duty toward the children as imposed by law." Id. at 47. See also 1972 Op. Att'y Gen. No. 72-030.

Under the present terms of R.C. 3313.64, however, custody is determinative. Am. H.B. 311 added the following definitional portion of R.C. 3313.64 in an apparent effort to clarify the question of who may be a parent in determining the district of school residence:

As used in this section "parent" means either parent, unless the parents are separated or divorced, in which case "parent" means the parent with legal custody of the child. If neither parent has legal custody of the child, "parent" means the person or government agency with legal custody or permanent custody as those terms are defined in divisions (B)(10) and (12) of section 2151.011 of the Revised Code.

As noted above, R.C. 3313.64 goes on to provide that "school residents are all children whose parents are actual residents of the school district." Thus, the school district in which is located the county agency that has been granted legal custody of a child would appear to be responsible for payment of tuition to another district where the child attends school, provided that the agency may be called an "actual resident" of the school district in which it is located.

I am unaware of any authority which considers the question of whether a government agency is a "resident" of the school district in which it is located. However, in determining where the government or one of its agencies resides for various purposes, many courts have recognized that such entities are capable of residing somewhere and have generally concluded that such an entity resides in the county where it is physically located. Helvering v. Stockholm Enskilda Bank, 293 U.S. 84 (1934) ("in the eyes of the law [the United States Government] has a residence"); United States v. Whitcomb, 314 F. 2d 415 (4th Cir. 1963) (United States is a resident of Maryland for purposes of a Maryland unsatisfied claim law); Helvering v. British American Tobacco Co., 69 F. 2d 528 (2d Cir. 1934) (United States has its corporate residence in the United States); State ex rel. Mitchell v. Ancient Order of United Workers of Kansas, 161 Kan. 437, 168 P. 2d 522 (1946) (Attorney General officially resides in the county where the capitol and his offices are located); Stoddard v. Manzella, 207 App. Div. 519, 203 N.Y.S. 136 (1924) (State Superintendent of Insurance officially resides in the county where his principal office is located); Meeker v. Scudder, 108 Ohio St. 423, 140 N.E. 627 (1923) (members of the Medical Board and other state officials reside in their official capacity in Franklin County). In Meeker, the court, in discussing whether venue was proper, stated:

It is hardly necessary to observe that these public officers [members of the Ohio Medical Board and others] against whom suit is brought in their official relation officially reside in Franklin county, and their official duties are administered from that office, and that Franklin county is the proper county, under the record in this case, in which to bring such suit.

108 Ohio St. at 492, 140 N.E. at 629 (emphasis added). Therefore, by analogy, a government agency with legal or permanent custody of a child would "reside" in the school district in which it is located, and it is my opinion that the General Assembly intended just such a result in R.C. 3313.64 when a child is in the legal custody of a government agency.

The definition of "parent" includes both persons and government agencies. If a "person" has custody, that person's place of residence is determinative of the district of school residence under R.C. 3313.64. Although a government agency does not "reside" as a natural person "resides," I can find no reason to reach a different conclusion as to the district of school residence where a child is in the legal or permanent custody of such agency.

Moreover, it is not insignificant that the General Assembly has defined residence in terms of the child's parents' "actual" (emphasis added) residence as opposed to simply the parents' "residence." By modifying "residence" with the word

"actual," it is clear that the General Assembly intended that school district of residence hinged upon the "actual" or "real" residence. "Actual" is defined in Webster's New World Dictionary 58 (library and office ed. 1972) to mean "existing in reality or in fact; not merely possible but real." A government agency, then, resides where it is "actually" or "really" located. Cf. Baucher v. Board of Education of Coldwater, 31 Ohio Misc. 49, 277 N.E. 2d 92 (C.P. Mercer County 1971) (natural parents were found to be actual residents of two school districts).

I am not unmindful that this interpretation of a government agency's residence for school district purposes will impose a heavy burden upon those school districts in which are located agencies which are traditionally given custody of children by the juvenile court. However, in view of the legislative history of R.C. 3313.64 and the language used in R.C. 3313.64, I am convinced that this construction of "residence" was intended by the General Assembly.

It is my conclusion, therefore, that when a court orders a child into the legal or permanent custody of a governmental agency, and the child is placed at a private institution located in a school district other than the one in which the agency is located, then the school district in which the governmental agency is located is the district of school residence of the child. Under these facts, the district in which the governmental agency with custody is located will be responsible for tuition when the child attends the public schools in the district where the private institution is located.

Your third question asks where the responsibility for tuition lies when the child is "placed" at an institution by a court but the custody of the child remains in the child's parents. Since the child remains in the "legal" custody of his parents, his district of school residence does not change. Thus, according to the express terms of R.C. 3313.64, the school district in which his parents actually reside is responsible for payment of tuition.

You finally inquire as to who is responsible for payment of tuition if the whereabouts of the parents are unknown or are known to be out of state. The answer here depends, again, upon the issue of custody. For example, if a child is placed at an institution and the whereabouts of the parents are unknown, it is logical to assume that the child will have been declared a neglected child under R.C. 2151.03, and taken into the custody of the juvenile court. The district of school residence would then depend on which person or government agency is granted legal or permanent custody by the court after the appropriate proceedings have been conducted. The school district in which the person or agency granted custody resides must pay tuition if the child attends the public schools in another school district.

When the parents' whereabouts are known to be out of state, the responsibility for tuition also depends on custody. If the parents have retained custody and are not actual residents of any school district of the state, the home or institution in which the child has been placed is required to pay tuition to the school district in which it is located pursuant to R.C. 3313.64. However, if the parents' residence is out of state and another person or a government agency has been granted legal or permanent custody, then the result would be as discussed above in a case in which the custody of the child is established by a court.

It is my opinion, therefore, and you are advised, that:

1. When a school is located in a private institution but is funded publicly and administered by the public school district in which the institution is located, it is a "public school" for purposes of R.C. 3313.64.
2. When a county agency has legal or permanent custody of a child, that child is considered to be a school resident of the district in which the agency is located. (1972 Op. Att'y Gen. No. 72-030,

1969 Op. Att'y Gen. No. 69-119, and 1959 Op. Att'y Gen. No. 92, p. 45 overruled to the extent that they conflict with R.C. 3313.64 as currently in effect.) If that child is an inmate at a private institution which is located in a school district that is not the district of school residence of the child, and if the child attends the public schools in the school district where the institution is located, then the district in which the county agency is located is required by R.C. 3313.64 to pay tuition for such child.

3. When a child lives at a private institution and the custody of the child remains with the child's parents, the child's district of school residence is the district of which his parents are actual residents, and that district is required by R.C. 3313.64 to pay tuition if the institution is located in another school district and the child attends the public schools in the school district where the institution is located. (1972 Op. Att'y Gen. No. 72-030, 1969 Op. Att'y Gen. No. 69-119, and 1959 Op. Att'y Gen. No. 92, p. 45 overruled to the extent that they conflict with R.C. 3313.64 as currently in effect.)
4. If a child's parents are known to reside out of state, and permanent or legal custody of the child has not been granted to another person or a government agency, R.C. 3313.64 requires that a private home or institution in which the child has been placed pay tuition to the school district where the child attends the public schools.