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1. CHILDREN'S HOME, COUNTY—INMATES—ADMITTED TO SCHOOLS IN DISTRICT WHERE HOME IS LOCATED—EXPENSE OF SCHOOL DISTRICT WHERE CHILDREN WERE SCHOOL RESIDENTS AT TIME OF PLACEMENT IN SUCH HOME—SECTIONS 3313.64, 3313.65 RC.
2. SCHOOLS NOT AVAILABLE IN DISTRICT WHERE HOME IS LOCATED OR IN HOME ITSELF—CHILDREN SENT TO SCHOOL IN ANOTHER DISTRICT—EXPENSE OF DISTRICT WHERE SCHOOL RESIDENTS AT TIME OF PLACEMENT IN HOME—SECTIONS 3313.64, 3313.65, 3317.08 RC.

SYLLABUS:

1. Children who are inmates of a county children's home, who at the time of placement in such home were not school residents of the district in which such Home is located, should be admitted to the schools of the district in which such Home is located, at the expense of their respective school districts in which they were school residents at the time of placement.

2. Where school facilities are not available in the school district in which a county children's home is located, nor available at the Home itself, the children who are inmates of such Home may properly be sent to attend school in another school district, and the school districts in which the children were school residents at the time of their placement in the children's home are responsible for the expense of educating such children.

Columbus, Ohio, June 5, 1956

Hon. William H. Irwin, Prosecuting Attorney  
Belmont County, St. Clairsville, Ohio

Dear Sir :

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

“The Board of Education of the Barnesville Exempted School District has requested that I seek an Attorney General’s opinion on the following matter :

“Certain children were legally committed to the Belmont County Children’s Home from the Union Township School District. School facilities were not available in the school district in which the Children’s Home is situated, and said children from the Union Township School District, as well as the other children in the home, were sent by the Superintendent of the Children’s Home to Barnesville schools for the purpose of being educated.

“The Board of Education of the Barnesville Exempted School District has submitted a bill to the Union Township School District for tuition for these children, whose parent or parents were legal residents of the Union Township School District at the time they were committed to the Belmont County Children’s Home. The Board of Education of the Union Township School District refuses to pay the tuition for these children.

“The question is whether the Board of Education of Union Township School District is liable for the tuition of these children.

“I have called to the attention of both the Board of Education of Union Township School District and the Board of Education of Barnesville Exempted School District to Attorney General’s Opinion 3041—1925, as well as the case of State ex rel. Gibbs, 143 O.S., 491. The 1925 Attorney General’s opinion held ‘the school district of the residence of such children at the time of such commitment is obligated for the expense of education of such children.’ The Gibbs case also held that the school district of last residence shall be liable for tuition for purpose of educating children. However, both boards of education would like an interpretation of Sections 3313.64 and 3313.65 of the Revised Code of Ohio, from your office.”

Section 3313.64, Revised Code, reads in pertinent part as follows :

“The clerk of the school district in which a *county*, semi-public, or district *children’s home* is located shall furnish the superintendent of public instruction a report of the names and

former residence of all inmates of such homes in attendance in the schools of the district, the duration of such attendance, and such other information as the superintendent requires. *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.*" (Emphasis added.)

The foregoing statute clearly requires the school district of the inmate's last residence to bear the expense of his education which is provided by the school district within which the county children's home is situated.

The facts before me reveal, however, that children who were committed to the county children's home, and who resided in Union Township School District, which territory does not embrace the county children's home, are not sent to school in the school district within which the Belmont county children's home is situated, but rather they are sent to a third school district, i.e., the Barnesville Exempted School District. It is asked whether the board of education of Union Township School District is responsible to Barnesville Exempted School District for the tuition of the children who originally resided in Union Township School District.

Section 3313.65, Revised Code, reads as follows:

"The inmates of a county, semipublic, or district children's home shall have the advantage of the privileges of the public schools. *So far as possible such children shall attend such school in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the board of education of the district in which such home is located.* Such board shall employ, with the approval of the superintendent of the home, necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel, and light." (Emphasis added.)

One of my predecessors in office had occasion to interpret Section 7676, General Code, which later became Section 4838-3, General Code, and which through code recodification became Section 3313.65, supra. I refer to Opinion No. 1913, Opinions of the Attorney General for 1939, page 1438, the second paragraph of the syllabus of which reads as follows:

"2. It is the duty of a board of education in a school district in which is located a county children's home to either maintain a school for the instruction of the children in said children's home, at or near the home, or to provide for their admission into the public schools of the district and to provide transportation for those pupils to the school to which they are assigned, the same as would other children similarly situated be entitled to transportation."

Similarly, in Opinion No. 1905, Opinions of the Attorney General for 1947, page 255, in which it was held that a member of a board of education of a city school district who accepts the position of superintendent of a county children's home located within the territorial limits of said school district *ipso facto* vacates his office as member of said board of education, I find the following discussion at page 258:

"\* \* \* It is clear from this section (Sec. 4838-3, G.C.) that *it is the duty* of a board of education in a school district in which is located a county children's home either to maintain a school for the instruction of the children in the home, at the home, or to provide for their admission into the public schools of the district. \* \* \* Section 4838-3, General Code, *supra*, indicates that the legislature has expressed as its preference that the board provide for the admission of children in the home into the public schools of the district rather than that it maintain a school at the home. Whether at the present time the Cambridge City Board of Education has deemed it possible to fulfill the expressed legislative preference or has found that to be impossible and is maintaining a school at the home is not pertinent to this inquiry as it is clear that either of these alternatives is within the scope of the board's authority. \* \* \*"  
(Emphasis added.)

Section 3313.64, Revised Code, clearly provides that any inmate of the county children's home who is not a school resident of the district in which the home is located, shall be educated at the expense of the school district in which he was a school resident at the time of placement. Were it not for Section 3313.65, Revised Code, and the two opinions referred to, *supra*, there would seem to be little room for questioning the right of the board of education of Barnesville Exempted School District to charge the board of Union Township School District for the tuition of the Union Township School District children who were committed to a county children's home situated in still a third district.

Your letter states that school facilities "were not available" in the school district in which the Belmont County Children's Home is situated,

and, further, that the children from Union Township School District as well as the other children in the Home have been sent by the Superintendent of the Home to the Barnesville Exempted School District schools.

Hence, not only has the school board in the children's home district failed to provide for the admission of children from the Home into its public schools, but no school is currently being maintained at the county children's home. Does the fact that the Union Township School District children are not being educated within the geographical limits of the school district in which the Home is located, relieve the Union Township School District of the obligation otherwise clearly owed to pay the expense of their education?

It should be observed that neither the 1939 nor the 1947 opinions, *supra*, dealt with fact situations involving the sending of children committed in a county children's home to be educated in a school district other than that in which the Home is situated. The 1939 opinion revolved around the question as to who has the authority or duty of providing school transportation for the children who were inmates in the children's home. That opinion held that no authority existed in the county commissioners or the managing officers of a county children's home to purchase a school bus for the transportation of the children in such county home to school. Instead, the duty to provide such transportation was found to rest upon the board of education in the school district in which the Home is located. Nothing in that opinion either expressly or impliedly denied to the board of education the right to send children who were inmates in the county children's home to another school district for their education, when school facilities were unavailable in the "children's home school district."

Likewise, there is nothing in the 1947 opinion which denies the right to send the children outside the district for an education. That opinion held that the positions of superintendent of a county children's home located within the territorial limits of a school district and member of the board of education of that school district are incompatible.

It should also be noted that Section 3313.65, *supra*, is phrased in such a manner as to admit to the contingency that it might not always be possible for the public schools of the district wherein the children's home is situated to provide school facilities for all inmates of the Home. Thus, the statute provides :

“\* \* \* *So far as possible* such children shall attend such school in the district within which such home is located. Whenever this is impossible *and a school is maintained* at the home, such school shall be under the control and supervision of the board of education of the district in which such home is located. \* \* \*”

(Emphasis added.)

Since I must assume from the facts presented that it was *not* possible or feasible for all of the children to attend school in the district, and since no school was maintained at the Home, it would appear that the Superintendent of the Home and the board of education, of necessity, were compelled to send the children to school in a district which had ample school facilities. This being the case, I can see no valid reason why the board of education of Union Township School District should not pay the expense of educating children from that district who were committed to the children's home, and sent from the district wherein the Home is situated to Barnesville schools. If there had been ample school facilities at the children's home or in that school district, there would be no question but that Section 3313.64, *supra*, as well as the ruling in Opinion No. 3041, Opinions of the Attorney General for 1925, page 781, and the case of State, *ex rel. Gibbs, v. Martin*, 143 Ohio St., 491, required Union Township School District to pay for the education of its children.

The policy of the law is that the district of school residence is to pay the expense of educating a pupil who attends school outside his district of school residence. In this connection, your attention is directed to Section 3317.08, Revised Code, which provides in material 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 \* \* \*.”

Pursuant to law, the children in question were committed to a Home outside their own school district. Since they were legally attending school outside their own district of school residence, their board of education must pay tuition.

Accordingly, it is my opinion that:

1. Children who are inmates of a county children's home, who at the time of placement in such Home were not school residents of the district in which such Home is located, should be admitted to the schools of the

district in which such Home is located, at the expense of their respective school districts in which they were school residents at the time of placement.

2. Where school facilities are not available in the school district in which a county children's home is located, nor available at the Home itself, the children who are inmates of such Home may properly be sent to attend school in another school district, and the school districts in which the children were school residents at the time of their placement in the children's home are responsible for the expense of educating such children.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General