

130.

CHILDREN—INMATES OF COUNTY, SEMI-PUBLIC OR DISTRICT CHILDREN'S HOME—BEARING OF SAID CHILDREN'S EDUCATIONAL EXPENSE WHEN TRANSFERRED TO FOSTER OR BOARDING HOMES.

SYLLABUS:

1. *Inmates of a county, semi-public or district children's home who have been placed in foster homes by the trustees of such home, by authority of Sections 3095 and 3096, General Code, may attend the public schools in the district where the foster home is located free of charge.*

2. *Children who are placed by the trustees of a county, semi-public or district children's home, in so-called boarding homes, by authority of Section 3095, General Code, should be educated at the expense of the school district which was the last residence of the children before being admitted to the said county, semi-public or district children's home.*

3. *Children who are in care of, or in charge of residents of a school district, with the exception of children in private children's homes, must be admitted to the public schools of such district. If circumstances are such that some person or other school district, or any public or private agency is liable for the tuition of such child in such school, the board of education of the school district where the child attends school may enforce that liability in an action at law. In the meantime, the child should not be deprived of the privilege of attending school.*

COLUMBUS, OHIO, February 27, 1929.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"The Franklin County Children's Home has placed certain of its wards in private homes in Darby Township, Pickaway County, Ohio. These wards have never been legally adopted by residents of Pickaway County, Ohio, and are still wards of the Franklin County Children's Home. Said wards are attending school in Darby Township, Pickaway County, Ohio; who is to pay the tuition for these said wards—Darby Township or Franklin County?"

It is the contention of our office that Section 7678 of the General Code of Ohio, fixes the rule that a child 'shall be educated at the expense of the district of its last residence;' and that as these wards have not been legally adopted by a resident of Pickaway County, Ohio, their legal residence is still Franklin County."

As a general proposition, it may be stated that the cost of educating the inmates of county, semi-public or district children's homes must be borne by the school district of the inmate's last residence. The difficulty arises in determining, under all circumstances, just what is the last residence of the child and whether or not after becoming an inmate of the home that status as to residence continues even though the child be committed by the authorities of the home to a private home, and whether or not a new residence, for school purposes, may be acquired by a child after it has become an inmate of the home. The answer to these questions depends on the construction to be placed on the language used in Section 7678, General Code, in the light of cognate statutory provisions which are in *pari materia* therewith.

Section 3088, General Code, provides that the inmates of a county, semi-public or district children's home who are of school age, shall be given an elementary education in the manner described in Section 7678, General Code. Section 7676, General

Code, provides that those inmates shall have the advantages of the privileges of the public schools in the district where the home is located, or a school may be maintained at the home. Section 7678, General Code, provides in part:

“A child who is an inmate of a county, semi-public or district children’s home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of its last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of its last residence. * * *”

Children in county children’s homes are of two classes. This is stated in Section 3090, General Code, as those admitted on the order of the juvenile court and those admitted by a majority of the trustees of the home. A further description of these two classes of children is found in Section 3093, General Code, as follows: “Those, who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the permanent care of such home,” and those “who have been by the parent or guardian voluntarily surrendered to such an institution or agency.

The statute, said Section 3093, General Code, provides further as to both classes of children, they “shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age.” This statement as to guardianship is somewhat modified in other provisions of Section 3093, General Code, and in Section 3096, General Code. In Section 3093, General Code, it is said: “Children committed for temporary care or received by agreement with parent or guardian shall be considered under the custody and control of the trustees only during the period of such temporary care except as hereinafter provided.”

In Section 3096, General Code, where it speaks of the right of the trustees of the home to place the children in private homes, either in pursuance of a written agreement or on trial, it is provided with reference to the guardianship of such children: For the purpose of securing the well-being and progress of such children, and the enforcement of the agreement, the trustees shall have the control and guardianship of such children until they become of age.”

As a matter of fact, while the statute, Section 3093, General Code, says that the children: “Shall be under the sole and exclusive guardianship and control of the trustees,” the juvenile court retains jurisdiction over all children committed by it on other than permanent commitments and may at any time terminate the guardianship of the trustees, if, in the judgment of the court, it is for the best interests of the children, and clearly, a parent who had committed his child to the institution could divest the trustees of all guardianship and control of the child by taking the child away from the institution unless it were shown that he, the parent, was not a fit person to have the guardianship and control which his natural rights as a parent accord to him. It is manifest that the words, “sole and exclusive” as used in Section 3093, General Code, should not be construed strictly and are subject to some limitation.

Especially is this true with reference to children who have been placed in private homes by the trustees of the children’s home upon an agreement with the proposed foster home to provide maintenance for and educate the children, as stated in Section 3096, General Code, which provides that the guardianship and control of the children shall extend only “for the purpose of securing the well-being and progress of such children and the enforcement of the agreement.”

By the terms of the agreement itself, as we shall see, some portion of the guardianship and control of the children is transferred and surrendered to the foster home.

See Sections 3095 and 3096, General Code. It might be well to note in this connection that Section 3096, General Code, was enacted in 1913 (103 O. L. 891) whereas Section 3093, General Code, containing the provisions with reference to sole and exclusive guardianship was last amended in 1919. (108 O. L., Part I, 261). The language with reference to sole and exclusive guardianship was not changed in the amendment of 1919. The same language was used in that connection in the enactment of the statute in 1913 when Sections 3093 and 3096, General Code, were enacted as a part of the same Act. (103 O. L. 891.)

This matter of guardianship is significant in our present inquiry for the reason that the school laws hereinafter referred to (Section 7681, General Code) as interpreted in prior opinions of this office permit the attendance of children free of charge in districts wherein reside the persons who stand in loco parentis to the children. There are two ways by which trustees of children's homes are authorized to place the inmates of the home in private homes. Section 3093, General Code, provides in part:

“* * * The board of trustees may by contract or otherwise provide suitable accommodations outside of the home and may provide for the care of any child under its control by payment of a suitable amount of (for) board, to a competent person, whenever the interests of such child require such an arrangement. * * *”

The homes where children are placed and their board paid, are called, for convenience, “boarding houses” by administrative officers in charge of the children's home, to distinguish them from so-called “foster homes” provision for which is made by Sections 3095 and 3096, General Code. The foster home provision is the other method by which the trustees of a children's home are authorized to place children in private homes. With reference to the foster home, it is provided by Section 3096, General Code, that, after being satisfied as to the wholesomeness and suitability of the home, having regard to its moral and religious atmosphere:

“The trustees shall require an agreement in a form to be prescribed by the board of state charities, in writing to be entered into, that such child so placed out shall be furnished with good and sufficient food, clothing and a public school education, and if deemed by the trustees to the interest of the child that such provisions be made, that there shall be payment to it of a reasonable amount to be named in the agreement, to be paid in such amounts and times as may be specified. Children may be placed in homes on trial without any written agreement.”

It is clear, from the terms of Section 3096, supra, that where a child is placed in a foster home and an agreement entered into as provided by the statute, the burden of providing for a public school education for the child is on the foster home. The agreement itself relieves the children's home of the cost of that education.

The statute, Section 7678, General Code, is clear in its terms wherein it provides that the inmates of a children's home shall be educated at the expense of the school district of the child's last residence. This does not mean, however, in my opinion that the school district of the last residence of the child before admission to a children's home shall be responsible for all time for the cost of educating that child, regardless of what changes may thereafter occur with reference to the status and residence of the child. For instance, Section 3094, General Code, provides that the children in a children's home may be returned by the trustees under certain circumstances to their parents or guardians. If that should be done, and in the meantime the parent or guardian had become a resident of some other district than the one where they resided when the child was first admitted to the home, it surely would not be contended that

the original district in which the child had resided would be required thereafter to pay for the cost of the child's schooling, or, if the child were adopted from the home by regular legal adoption, it would not be contended that the district of the residence of the person adopting the child would not be required to admit the child into its schools free of charge, but could recover for the child's schooling from the district where the child resided when it was first admitted to the children's home.

If there were no other pertinent considerations, the very fact that foster homes may be found for the children, and the obligation imposed by contract on such foster homes to provide for the education of children so placed, clearly points to the fact that that the language of the statute as to the education of the child being at the expense of the district of last residence should not be so strictly construed as to preclude any future change in the status of the child so as to affect the obligation of paying for the child's education. Section 7681, General Code, provides 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."

In an opinion of my predecessor found in the Opinions of the Attorney General for 1927 at page 160, it is said:

"1. The term ward, as used in Section 7681, General Code, should not be limited to its technical meaning, but should be construed liberally in the interests of the education of the youth of school age in this state.

2. A determination of the question of whether or not a child has been in good faith committed by its parents to the care and custody of another for the purpose of having a home provided for it, or whether such living with another is merely for the purpose of evading the law requiring the payment of tuition for school attendance, is in all cases a question of fact to be determined from a consideration of all the facts and circumstances surrounding the case.

3. A child who resides permanently in the home of an actual resident of a school district and to which child such actual resident stands in loco parentis may attend the public schools of such district without paying tuition, even though the parents of such child reside outside the district."

In my opinion, children placed by the trustees of a children's home in a foster home, by authority of Section 3095, General Code, and in pursuance of the agreement provided for in Section 3096, General Code, become wards of the said foster home in the sense that the term "ward" is used in Section 7681, General Code, and are entitled to attend school in the district where the said foster home is located, free of charge, and the same would be true with reference to children who had been placed in homes on trial, without any written agreement, if the circumstances of their being placed there are such that the persons in whose home they are placed may be said to stand in loco parentis to the child. The child then becomes, for school purposes, a ward of the person to whom his care and custody are committed and the child is entitled to the privilege of attending the school in the district where such person is an actual resident. So, also, would those children who work to support themselves by their own labor be entitled to attend school free in the district in which they are employed and the trustees of a children's home clearly have the right to permit the children in a home, under proper circumstances, to seek employment whereby they may support themselves.

This would not be true, however, with reference to children who are in so-called boarding homes so placed by the trustees of a children's home, as provided by Section 3093, General Code. Such children, while in the boarding home, are still in a technical sense inmates of the children's home, although not literally and physically at the home. The expenses attendant upon the schooling of such children should be borne by the district of the last residence of the child before becoming an inmate of the home, and this is true, even though the district of that last residence might be the district in which the children's home is located. After the children become inmates of the children's home, the trustees have full guardianship over said children to the extent of finding boarding homes for them if it is thought proper, and the children whose last residence was in the district where the home is located are as much subject to be sent to a boarding home as are any other children, and if that is done the district where they attend school may recover from the district of their last residence, for the expense of their schooling.

In any event all children within the compulsory school age, and not employed on an age or schooling certificate, residing in, or in charge of a resident of a school district, whether that charge comes about by reason of legal adoption or by reason of commitment or permission of any person or authority authorized to make such commitment or grant such permission, such as the trustees of a county, semi-public or district children's home, or whether or not the home in which the child resides has the characteristics of a foster home or a boarding home, may attend the school in the district where they reside or where the person in whose charge they are resides, excepting children in a private children's home. The person so in charge of them must send them to a public, private or parochial school as provided by the compulsory school laws of Ohio, Sections 7762, et seq., General Code.

The person having the care of a child of compulsory school age who fails to send such child to school in compliance with the compulsory school laws of Ohio, may be prosecuted for such failure under Section 12974, General Code. Section 7770, General Code provides that the attendance officer, or his assistant, may take into custody any youth of compulsory school age who is required by law to attend school and shall conduct such youth to the school he has been attending, or should rightfully attend.

It is provided by Section 7738, General Code, that:

"Every board of education in this state must provide sufficient accommodations in the public schools for all children in their districts compelled to attend the public schools under the provisions of this chapter. Authority to levy the tax and raise the money necessary for such purpose is hereby given the proper officers charged with such duty under the law."

Said Section 7738, General Code, when enacted in its present form, as Section 4022-13, Revised Statutes, was a part of the chapter relating to compulsory education. (95 O. L. 622.) The statutes above referred to are in *pari materia* with the section here under consideration, and if it is the duty of persons having the care and charge of children to send them to the public school of the district in which such child is found, and it is the duty of the attendance officer to conduct them to the school, it follows that it is the duty of the school board to admit such children.

A board of education can not refuse to permit the children in the district to attend the schools of the district, even though there may be some question as to their right to attend the school free of charge. The children have a right to attend the school if they are in the care of, or in charge of a resident of the district, with the exception of children in a private children's home. If any person or any school district is liable for the child's tuition, the board of education in the district where it attends school may enforce that liability by an action at law, but can not refuse the privilege of the

schools of the district to such child even though there is such a liability for tuition and it is not paid. The fact that school authorities may get into a controversy as to whether or not tuition should be paid for a child must not stand in the way of the child's right to attend school.

Respectfully,
GILBERT BETTMAN,
Attorney General.

131.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR
DUTIES—FOURTEEN RESIDENT DISTRICT DEPUTY DIRECTORS.

COLUMBUS, OHIO, February 27, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration fourteen bonds, each for the sum of five thousand dollars, and conditioned for the faithful performance of the duties of the principal as Resident District Deputy Director, as follows:

I. E. Amsden, principal (Sandusky County), upon which the Fidelity and Casualty Company appears as surety.

Earl Watkins, principal (Licking County), upon which the American Surety Company of New York appears as surety.

R. E. Levering, principal (Knox County), upon which the Fidelity and Casualty Company appears as surety.

Arthur B. Wilson, principal (Lake County), upon which the Detroit Fidelity and Surety Company appears as surety.

Peter P. Sheehan, principal (Guernsey County), upon which the Fidelity and Deposit Company of Maryland appears as surety.

E. F. Clark, principal (Ashtabula County), upon which the American Surety Company of New York appears as surety.

Harold F. Gerold, principal (Erie County), upon which the Fidelity and Casualty Company appears as surety.

Guy M. Cartwright, principal (Putnam County), upon which the United States Fidelity & Guaranty Company appears as surety.

Ben Walker, principal (Ross County), upon which the United States Fidelity & Guaranty Company appears as surety.

Max S. Gorsuch, principal (Jefferson County), upon which the Maryland Casualty Company appears as surety.

W. A. Montgomery, principal (Logan County), upon which the Ohio Casualty Insurance Company appears as surety.

Clayton F. Kelly, principal (Henry County), upon which the American Guaranty Company appears as surety.

D. M. Cooper, principal (Carroll and Tuscarawas Counties), upon which the Aetna Casualty and Surety Company appears as surety.

Fred R. Williams, principal (Cuyahoga County), upon which the Royal Indemnity Company appears as surety.

It further appears that all of the sureties upon the bonds as hereinbefore mentioned have been duly authorized to transact business in Ohio.

In view of the foregoing, I have approved said bonds as to form and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.