

## OPINION NO. 76-055

## Syllabus:

- 1) When children are placed in private foster facilities by the Ohio Youth Commission pursuant to R.C. 5139.07, they are school residents of the school district in which the facility is located, and that school district is obligated to provide such children with free education under R.C. 3313.64.
- 2) The school district in which such a home is located may determine to provide such education at the home instead of in the regular schools of the district.

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To: David A. Cutright, Pros. Atty., Chillicothe, Ohio  
By: William J. Brown, Attorney General, August 13, 1976

You have requested my opinion on the following questions:

1. Pursuant to that provision of Section 3313.55 of the Ohio Revised Code which provides in pertinent part as follows:

". . . The Board of any school district in which is located . . . any public institution except state institutions for the care and treatment of delinquent, unstable, or socially maladjusted children, shall make provision for the education of all educable children therein;. . . ."

is the Union-Scioto School District relieved from the responsibility of providing for the education of such children placed by the Ohio Youth Commission with the Roweton Boys Ranch?

2. If the answer to the first question be in the negative, then is the Union-Scioto Local School District obligated to provide for the education of such children at the institution where they were placed by the Ohio Youth Commission?

The facts presented in your letter are that a private facility known as Roweton Boys Ranch has a contractual relationship with the Ohio Youth Commission whereby, under separate contracts for each child, children are placed by the Ohio Youth Commission with the Roweton Boys Ranch for rehabilitation. Such children remain wards of the Ohio Youth Commission at all times while so placed. The Roweton Boys Ranch is located within the Union-Scioto Local School District.

R.C. 3313.55, to which you refer reads in pertinent part:

"[T]he board of any school district in which is located a state, district, county, or municipal hospital for children with tuberculosis or epilepsy or any public institution, except state institutions for the care and treatment of delinquent, unstable, or socially mal-adjusted children, shall make provision for the education of all educable children therein; except that in the event another school district within the same county or an adjoining county is the source of sixty per cent or more of the children in said hospital or institution, the board of that school district shall make provision for the education of all the children therein. . . ."

(Emphasis added.)

Despite its contract relationship with a state agency the home in question is, as you have noted, a private facility. Therefore, it is not a state or public institution for purposes of R.C. 3313.55. I would refer you, however, to R.C. 5139.07 which authorizes the placement of a child in a foster care facility for purposes of rehabilitation. Such placement appears to be the case with which you are concerned. That section provides:

"As a means of correcting the socially harmful tendencies of a child committed to it, the youth commission may require participation by him in vocational, physical, educational, and corrective training and activities, and such conduct and modes of life as seem best adapted to rehabilitate him and fit him for return to full liberty without danger to the public welfare.

The Youth Commission may require such child to return to his home or to be placed in a foster care placement. The legal residence of a child so placed by the youth commission is the place the child is residing in accordance with a youth commission order of placement, which place is deemed to be his district of school residence under section 3313.64 of the Revised Code."

R.C. 3313.64 provides that the "[d]istrict of school residence shall be the school district in which a school resident shall be entitled to attend school free." It follows that under R.C. 3313.64 the Union-Scioto Local School District is required to provide for the education of children placed by the Ohio Youth Commission pursuant to R.C. 5139.07 in the Roweton Boys Ranch, and that the district is not relieved of this duty by R.C. 3313.55.

Your second question is whether the school district is obligated to provide for the education of the children at the school or whether it may provide for the education of such children at the institution where they have been placed.

It may initially be noted that a school district's duty to provide for the education of residents of the district arises under R.C. 3313.64. That section states that 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." Children placed in a foster facility by the Ohio Youth Commission pursuant to R.C. 5139.07 are school residents of the district in which the facility is located and are, therefore, entitled to a free education.

However, while R.C. 3313.64 guarantees free education, it does not mandate the place where the education must be provided. On this point R.C. 3313.48 states in pertinent part that:

"The board of education of each city, exempted village, local, and joint vocational school district shall provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof. . . ."

This language has been construed to authorize the school board of a district, in which a juvenile detention home is located, to provide inmates of the home with education and school facilities at the home because of the special circumstances and needs of the children so committed. 1946 Op. Atty. Gen. No. 868.

In addition R.C. 3313.20 and R.C. 3313.47 give school boards broad discretion with respect to the operation of their schools and have been cited in support of opinions holding that a school board can exclude certain persons from regular classes. See State ex rel. Idle v. Chamberlain, 390 Op. 2d 262 (1961), 175 N.E. (2d) 539 (Butler Co. Comm. Pl. Ct.); 1947 Op. Atty. Gen. No. 1967.

This general authority of the school boards has been implicitly recognized by the General Assembly itself in R.C. 3313.65, which sets out guidelines for the operation of a school at a county, semi-public or district children's home when it is impossible for the children of the home to attend regular schools in the district. While express authority for the operation of such schools is not specifically given, it may reasonably be inferred from such guidelines, and from the general authority given school boards with respect to the operation of schools.

In view of the foregoing I must conclude that when a private home such as Roweton Boys Ranch receives children from the Ohio Youth Commission pursuant to R.C. 5139.07, the school district, in which it is located, may in its discretion under R.C. 3313.20, 3313.47, and 3313.48 provide for the education of such children at the home.

Of course, any determination to exclude one or more

student residents from regular schools and to provide separate educational facilities must be for reasons which are neither arbitrary nor contrary to law. As such the establishment of separate facilities must be for a reasonable purpose which does not violate the student's constitutional protection against discriminatory practices. See, e.g., Bronson v. Board of Education, 525 F. 2d. 344 (1975); Deal v. Cincinnati Board of Education, 419 F. 2d (1969).

In answer to your question it is my opinion and you are so advised that:

- 1) When children are placed in private foster facilities by the Ohio Youth Commission pursuant to R.C. 5139.07, they are school residents of the school district in which the facility is located, and that school district is obligated to provide such children with free education under R.C. 3313.64.
- 2) The school district in which such a home is located may determine to provide such education at the home instead of in the regular schools of the district.