dition, and undoubtedly the Arcanum Board of Education for that reason would not have been required to admit him to its high school. He was admitted, however, and permitted, if not with the consent of the county superintendent, at least with his acquiescence as well as the acquiescence of all the school authorities in both districts, to attend the high school in Arcanum District and to there make up the courses of study which he had not passed in the elementary school. I see no reason why the Twin Township District may not pay his tuition if it sees fit to do so. I have some doubts as to whether the Arcanum District could require the Twin Township District to pay this tuition. That question is not presented here, as I understand the Twin Township District is willing to pay the tuition and the only question is whether or not it may lawfully do so.

If the pupil had not been allowed to attend the Arcanum High School, but had been required to spend another year or part of a year, in the Twin Township schools, the Twin Township District would have been at the expense of carrying this pupil for a year or a part of a year in its elementary schools, and still would be obligated to pay tuition for four years schooling in a high school. This way, if this year's high school tuition is paid in the Arcanum Schools, Twin Township can not be required to pay high school tuition for the pupil for more than three additional years. So that in the long run the district loses nothing financially, and in fact saves the cost of the pupils' schooling in its schools for at least a part of a year which would necessarily have accrued if the pupil had been required to make up his elementary school work in its schools.

While there is probably no legal obligation on the part of the Twin Township District to pay this tuition to the Arcanum District, and the Arcanum District could probably not enforce collection, yet clearly, in my opinion, a moral obligation exists which it is within the power of the Twin Township District to pay, and it may be paid.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3211.

EXPENSES—OF PRISONERS HELD IN CITY WORKHOUSE FOR TRIAL FOR VIOLATION OF STATUTE—BORNE BY SAID CITY.

SYLLABUS:

The expense of the board and maintenance of a person held in a municipal prison for trial for the violation of a state statute should be paid by the municipality.

COLUMBUS, OHIO, May 11, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads as follows:

"In a city containing a workhouse, wherein prisoners committed on

affidavits of state offenses, have their board and maintenance paid by county, while city bears all expenses of those committed for violation of ordinance.

Question: In cases continued, before trial, is county liable for board and maintenance of such person held for trial on an affidavit of violation of statute?"

A subsequent communication from your department reveals that the arrest and commitment to the city workhouse were made by municipal officers. That a police officer has authority to make an arrest for the violation of a state statute is free from doubt.

Section 4378, General Code, relative to public safety in cities, reads in part as follows:

"The police force shall preserve the peace, protect persons and property and obey and enforce all ordinances of council and all criminal laws of the state and the United States. * * * *"

Section 4128, General Code, reads in part as follows:

"When a person over sixteen years of age is convicted of an offense under the law of the state or an ordinance of a municipal corporation, and the tribunal before which the conviction is had is authorized by law to commit the offender to the county jail or corporation prison, the court, mayor, or justice of the peace, as the case may be, may sentence the offender to the workhouse, if there is such house in the county.
* * * "

Section 4129, General Code, provides for the employment of prisoners in such workhouse, but does not contain any provision for the disposition of one who has not been convicted but is being held for trial.

An examination of the statutes does not reveal any authority for a person to be committed to the workhouse of a municipality prior to conviction.

Section 4125, General Code, relative to municipal prisons and station houses, reads as follows:

"The marshal or chief of police shall provide all persons confined in prison or station houses with necessary food during such confinement, and see that such places of confinement are kept clean and made comfortable for the inmates thereof."

Section 4126, General Code, reads:

"Council shall provide, by ordinance, for sustaining all persons sentenced to or confined in such prison or station houses, at the expense of the corporation, and in counties where said prisons or station houses are in quarters leased from the county commissioners may contract with said commissioners for the care and maintenance of such persons by the sheriff or other person charged with the care and maintenance of county prisoners. On the presentation of bills for food, sustenance and necessary supplies, to the proper officer, certified by such person as the council

may designate, such officer shall audit them, under such rules and regulations as the council prescribes, and draw his order on the treasurer of the corporation in favor of the officer presenting such bill, but the amount shall not exceed forty cents a day for any person so confined."

From the foregoing sections it is apparent that the board and maintenance of prisoners held in a city prison or station house should be paid by the marshal or chief of police of the municipality, for which expense the municipal council is authorized to provide. Since the arrest in this instance was made by a municipal officer, and the person confined in a municipal prison, the cost of his maintenance and board should be borne by the municipality.

I am, therefore, of the opinion that the expense of the board and maintenance of a person held in a municipal prison for trial for the violation of a state statute should be paid by the municipality.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3212.

DEPENDENT CHILD—COMMITTED BY JUVENILE COURT TO DIVISION OF CHARITIES AND THEN BY PROBATE COURT TO FEEBLE MINDED INSTITUTION—COUNTY CHARGEABLE FOR COST OF CHILD'S MAINTENANCE DURING TIME SAID DIVISION KEEPS CHILD DUE TO INCAPACITY OF SUCH INSTITUTION.

SYLLABUS:

1. *The probate court, under the provisions of Section* 1895 *of the General Code, may designate the Board of State Charities to care for a child which has been committed to the institution for the feeble-minded, when by reason of the incapacity of such institution such child can not be received.*

2. *Wherever, under authority of the provisions of Section* 1895 *of the General Code, a Probate Court designates the Board of State Charities to care for a child which has been committed to the Institution for the Feeble-Minded and which can not be received by reason of the incapacity of such institution, such court may properly, in its order of designation, provide that the expense of maintaining the child until its reception in the institution, shall be charged against the county.*

COLUMBUS, OHIO, May 11, 1931.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"Under Sections 1352-3 et seq., the Division of Charities, Department of Public Welfare, receives dependent children through commitment by the juvenile courts. Under a juvenile court commitment to the Division of Charities, the costs of the child's care and maintenance in a boarding