

OPINION NO. 88-023**Syllabus:**

1. Juv. R. 34(C) and R.C. 2151.357 require a court that commits a child to the custody of the Department of Youth Services to determine which school district shall bear the cost of educating the child.
2. If a child is committed to an institution operated by the Department of Youth Services, the Department is eligible to receive educational tuition pursuant to R.C. 3313.64(I) and R.C. 3313.64(C)(2).

To: Geno Natalucci-Persichetti, Director, Department of Youth Services, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, March 30, 1988

I have before me your request for my opinion concerning whether the Department of Youth Services may recover tuition for educating children in its custody. Specifically, you ask:

When a youth is committed to the Department of Youth Services, is the Department entitled to educational tuition from the school district in which the youth resided before his commitment to the Department?

R.C. 2151.355 and R.C. 5139.05 allow a juvenile court to commit juvenile offenders to the custody of the Department of Youth Services. R.C. 2151.355(A), for example, provides:

If a child is found by the court to be a delinquent child, the court may make any of the following orders of disposition:

....
 (4) If the child was adjudicated delinquent by reason of having committed an act that would be an aggravated felony of the third degree or a felony of the third or fourth degree if committed by an adult, commit the child to the legal custody of the department of youth services for institutionalization for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of the age of twenty-one years....

See also R.C. 2151.355(A)(5) and (6), which authorize commitment to the Department of Youth Services after conviction for acts which would be felonies or aggravated felonies of the first or second degree if committed by an adult, or for acts that would be murder or aggravated murder if committed by an adult. R.C. 5139.05(A) indicates that the court's commitment of the youth to the Department of Youth Services pursuant to R.C. 2151.355 is a "permanent commitment":

The juvenile court may commit any child to the department of youth services *permanently as authorized in...[R.C.] 2151.355...* provided that any child so committed shall be at least twelve years of age at the time of his commitment. Any order to commit a child to an institution under the control and management of the department shall have the effect of ordering that the child be committed to the department and assigned to an institution for an indefinite term consisting of the prescribed minimum period of time and a maximum period not to exceed the child's attainment of the age of twenty-one years if the child was committed pursuant to...[R.C. 2151.355(A)(4) or (5)]...for an act that would be an aggravated felony of the first, second, or third degree or a felony of the first, second, third, or fourth degree if committed by an adult, or until the child's attainment of the age of twenty-one years if the child was committed pursuant to...[R.C. 2151.355(A)(6)]...for an act that would be the offense of murder or aggravated murder if committed by an adult.

R.C. 5139.01(A)(2) defines "permanent commitment" as "a commitment which vests legal custody of a child in the department of youth services." The General Assembly's definition of "legal custody" indicates that the department is responsible for providing education for the youths in its custody. R.C. 5139.01(A)(3) provides:

"Legal custody," insofar as it pertains to the status which is created when a child is permanently committed to the department of youth services, means a legal status wherein the department has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control him; the *responsibility* to provide him with food, clothing, shelter, *education*, and medical care; and the right to determine where and with whom he shall live, subject to the minimum periods of institutional care prescribed in...[R.C.] 2151.355...provided, that these rights and responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities.

I have already noted that R.C. 2151.355 allows a court to commit a child to the "legal custody" of the Department of Youth Services. R.C. 2151.011(A)(10) defines "legal custody" to include the responsibility to provide education:

"Legal custody" means a legal status created by court order which vests in the custodian the right to have physical care and control of the child and to determine where and with whom he shall live, and the *right and duty* to protect, train, and discipline him and to provide him with food, shelter, *education*, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An

individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

You ask whether the Department of Youth Services is entitled to tuition from a child's former school district for the education it provides him pursuant to 5139.01 and R.C. 2151.011. Juv. R. 34(C) specifically requires a court that removes a child from the custody of his parents to determine which school district shall pay the child's educational costs:

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 judgment is conditional, the order shall state the conditions. 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.

In addition, I note that R.C. 2151.357 describes the manner in which the court will determine which school district is responsible for the cost of educating a child in the custody of a government agency, and provides in pertinent part:

In the manner prescribed by...[R.C. 3313.64(C)(2)]...the court shall, at the time of making any order that removes a child from his own home or that vests legal or permanent custody of the child in a person or government agency other than his parent, determine the school district that is to bear the cost of educating the child. Such determination shall be made a part of the order that provides for the child's placement or commitment.

R.C. 3313.64(C)(2) provides explicit standards for the court to use in determining which school district is to be responsible for a child's educational costs:

Except as otherwise provided in division (C)(2)(d) of this section, if the child is in the permanent or legal custody of a government agency or person other than the child's parent, tuition shall be paid by:

(a) The district in which the child's parent resided at the time the court removed the child from his home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first; or

(b) If the parent's residence at the time the court removed the child from his home or placed him in the legal or permanent custody of the person or government agency is unknown, tuition shall be paid by the district in which the child resided at the time he was removed from his home or placed in legal or permanent custody, whichever occurred first; or

(c) If a school district cannot be established under division (C)(2)(a) or (b) of this section, tuition shall be paid by the district determined as required by...[R.C.] 2151.357...by the court at the time it vests custody of the child in the person or government agency.

(d) If at the time the court removed the child from his home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement was not known to reside in this state, tuition shall be paid by the district determined under...[R.C. 3313.65(D)]...as the district required to pay any tuition while the parent was in such facility or placement.

In 1986, the Fayette County Court of Appeals determined that Juv. R. 34(C) requires a court to follow the procedure set forth in R.C. 2151.357 and R.C. 3313.64(C)(2) to determine which school district is to bear the cost of a child's education. *Christman v. Washington Court House School District*, 30 Ohio App. 3d

228, 507 N.E.2d 384 (Fayette County 1986). The *Christman* court was asked to determine whether a court had used the proper method to determine which school district was required to pay tuition for a child who had been committed to the Department of Youth Services. The court concluded that Juv. R. 34(C) and R.C. 2151.357, when read together, impose a duty on a court to determine which school district has the responsibility to pay a child's tuition:

Juv. R. 34(C) must be read in conjunction with R.C. 2151.357. Both the rule and the statute make it the court's duty to determine the school district that is to bear the cost. Juv. R. 34(C) sets forth the "time" at which the court is to make the determination regarding which school district bears the cost of education....R.C. 2151.357 sets forth the "specific manner" by which the court shall determine which school district bears the cost of education.

Id. at 231, 507 N.E.2d at 387.

I agree with the conclusions of the Fayette County Court of Appeals that the relevant provisions require the court to determine which school district must bear the cost of a child's education. I must next determine whether the Department of Youth Services is entitled to receive the tuition payments required to be made by a school district pursuant to R.C. 3313.64(C)(2). R.C. 3313.64(?) provides in pertinent part:

A school district required to pay tuition pursuant to division (C)(2) or (3) of this section or...[R.C.] 3313.65...shall have an amount deducted under...[R.C. 3317.023(G)]...equal to its own tuition rate for the same period of attendance. A school district entitled to receive tuition pursuant to division (C)(2) or (3) of this section or...[R.C.] 3313.65...shall have an amount credited under...[R.C. 3317.023(G)]...equal to its own tuition rate for the same period of attendance. If the tuition rate credited to the district of attendance exceeds the rate deducted from the district required to pay tuition, the department of education shall pay the district of attendance the difference from amounts deducted from all districts' payments under...[R.C. 3317.023(G)]...but not credited to other school districts under such division, and from appropriations made for such purpose.

Although the General Assembly has defined various types of school districts in R.C. 311.02 to R.C. 311.05, the schools in institutions operated by the Department of Youth Services do not fall within any of these definitions. R.C. 3301.16, however, allows the Department of Education to charter "special schools," and provides in pertinent part:

Pursuant to standards prescribed by the state board of education as provided in...[R.C. 3301.07(D)]...such board shall classify and charter school districts and individual schools within each district. Such board shall revoke the charter of any school district or school which fails to meet the standards for elementary and high schools as prescribed by the board.

I have been informed by an employee of the Ohio Department of Education that the Department charters schools in institutions operated by the Department of Youth Services as "special schools" pursuant to R.C. 3301.16. I must therefore determine whether a "special school" chartered under R.C. 3301.16 that provides education to a child committed to its legal custody is entitled to receive tuition for that child's education pursuant to R.C. 3313.64(C)(2) and R.C. 3313.64(l).

R.C. 2151.011 and R.C. 5139.01 require that the Department of Youth Services provide an education to juveniles who are committed to its custody. R.C. 2151.357 and Juv. R. 34(C) require the juvenile court to determine, pursuant to R.C. 3313.64(C)(2), which school district will "bear the cost" of educating a child committed to the custody of the Department of Youth Services. I see no reason to conclude that "special schools" in institutions operated by the Department of Youth

Services are ineligible to receive the tuition payments ordered by the juvenile court pursuant to the Revised Code and Juvenile Court rules. Like the school districts that receive tuition payments pursuant to R.C. 3313.64(I), a Department of Youth Services institution provides education to a child from another school district; pursuant to R.C. 3301.16, the institution's school must meet Department of Education standards for providing elementary and secondary education. It would violate both the express and implied intent of the statute to conclude that the Department of Youth Services cannot receive tuition payments pursuant to R.C. 3313.64(I) and R.C. 3313.64(C)(2) simply because its institutions are "special schools" rather than "school districts" in the technical sense. I therefore conclude that these institutions are "entitled to receive tuition" pursuant to R.C. 3313.64(C)(2). See generally, *Henry v. Central National Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (Syllabus, paragraph two) (the "ultimate function" of statutory construction is to ascertain and "give effect to the intention of the General Assembly").

Accordingly, it is my opinion and you are advised that:

1. Juv. R. 34(C) and R.C. 2151.357 require a court that commits a child to the custody of the Department of Youth Services to determine which school district shall bear the cost of educating the child.
2. If a child is committed to an institution operated by the Department of Youth Services, the Department is eligible to receive educational tuition pursuant to R.C. 3313.64(I) and R.C. 3313.64(C)(2).