Prior to the above amendment of section 2, Article XII, a bond issuing subdivision levied taxes on all the taxable property therein sufficient to pay the interest on and retire its bonds at maturity, while under section 5626-2 such levy now can only be made on the real, public utility and tangible personal property, so that, as a result of this enactment, intangible personal property is no longer available for levies by such subdivision.

It was apparently the intention of the electors in approving the schedule to this amendment that, in the event tax laws were passed pursuant to the amendment which would result either in the reduction in the amount of taxable property available for levies for interest and sinking fund or retirement of bonds issued or authorized prior to January 1, 1931, within the fifteen mill limitation, or in the reduction of the rate imposed upon such property, such levies should be made outside of said limitation to the extent required to equalize such reduction. Consequently, where such laws have effected a reduction in the amount of taxable property available for such levies, such levies may be made outside the fifteen mill limitations, but only to the extent required to equalize such reduction.

I am of the opinion, therefore, that where laws relating to taxation passed since January 1, 1931, have effected a reduction in the amount of taxable property available for levies by a school district for interest and sinking fund or retirement of bonds issued or authorized by it prior to such date within the statutory fifteen mill limitation, such levies may be outside the fifteen mill limitation now provided for in Section 2, article XII of the Ohio Constitution, to the extent required to equalize such reduction.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2045.

TUITION—CHILD RESIDING IN DISTRICT WITH RESIDENT THEREOF WHERE PARENTS RESIDE OUTSIDE DISTRICT, REQUIRED TO PAY WHEN.

SYLLABUS:

1. *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.*

2. *Where the parents of the child place that child in a boarding house which is conducted as a business enterprise for profit and which lies outside the school district in which the parents reside, the child is not entitled to attend the schools of the district in which the boarding house is located without the payment of tuition.*

3. *Where the parents of a child place the child in a home outside the district of the residence of the parents, temporarily, and for the express purpose of that child attending school in the district where it has been placed, the parents are liable to the school district in question, for tuition for the child's attendance in school.*

COLUMBUS, OHIO, December 21, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

"A county superintendent of schools has written me regarding the following situation, and I am referring it to you for an opinion:

'A mother residing and working in the city of Cleveland, has placed her two children for board and care in a local school district belonging to the county school system. These two children attend the local public school. The question has been raised as to whether or not this mother should be required to pay tuition for such attendance. I might add that she has not placed the children with a relative and is paying for their board and care.'

Your opinion on the above situation will be greatly appreciated.

I am attaching correspondence relative to the situation which has been had with the prosecuting attorney, in order that you may have all of the facts of the case."

The attached correspondence affords no additional facts that are at all helpful in solving the problem presented by the county superintendent's inquiry. This correspondence consists entirely of an opinion of the Prosecuting Attorney of Cuyahoga County, in response to the precise question here presented, rendered under date of March 17,1931, and a letter from the county superintendent of schools of the Cuyahoga County School district, addressed to you under date of September 22, 1933, in which he states in part:

"Enclosed are copies of correspondence with our local prosecutor's office. We have followed the opinion of our prosecutor without deviation, up until the present. We have, however, at this time, a considerable number of cases of the kind described in my letter and it so happens that they are in schools already overcrowded and I am writing, therefore, to you with the hope that you will endeavor to secure for us an Attorney General's opinion on the point in question.

* * Because of the strained financial conditions existent at present, we are inclined to be impelled to do only that which is legal as we can learn it through the opinion we hope you will secure."

At this point, I am prompted to state that administrative officers should be guided in legal matters, by the advice of their duly constituted legal advisers. The prosecuting attorneys are, by law, constituted the legal advisers of county boards of education within their counties and of the several district boards of education within those county school districts. (§4761 General Code).

I note that the prosecutor, in his opinion which is attached to your letter, after observing that school pupils may have a residence, for school purposes, separate and apart from the residence of their parents, and commenting upon the difficulties that are met in determining whether or not the children you mention had a school residence apart from the residence of their mother, states further:

"I would say that, in my opinion, if the child were in the present school district merely for the purpose of attending school in that district, rather than in the school district of the City of Cleveland and were only there temporarily for that purpose, that in that case they would not have a residence there and the local schools would not be required to accept them as pupils. The facts in this connection might, of course, be difficult to determine or prove.

> On the other hand, however, if the mother has placed them in the district for reasons of health, economy or similar conditions, I would then say they had a residence there and would be entitled to attend the local schools."

Without more facts directly applicable to the specific case, it is impossible to give a more definite answer to the superintendent's question than that given by the prosecutor. A legal opinion on a question of this kind must necessarily be general, unless all the facts peculiar to the situation are presented, as they would be if the matter were before a court for decision. All that can be said in answer to a question stated as is this one, are the general principles of law applicable to the situation. Their application in a particular case is to a great extent an administrative problem rather than a legal one.

Whether or not a child living apart from its parents may attend school in the district in which it lives, without the payment of tuition, depends on a great many circumstances peculiar to the particular situation. The fact that the parent pays for the board and care of the child is not dispositive of the matter and may not be of especial significance. In some such cases a child might be entitled to admission in the schools of the district where it was being cared for even though the parent did not pay for its care. On the other hand, the person with whom a child is living and being cared for, may be paid for that board and care in some instances and yet the child would be entitled to the privileges of the public schools of the district without charge. Nor is the fact that the child is being cared for by relatives at all conclusive. Each of these considerations is a factor to be given consideration in determining the question. It is the quality and extent of the "care" by the person with whom the child is living, coupled with the intent of the parent and the custodian of the child as to the extent and quality of that "care" that is the most important and weighty circumstance to be considered in determining whether or not a child in a given case, who is living apart from his parents is entitled to the privileges of the schools in the district in which he is being cared for, free of charge.

Section 7681, General Code, provides, in part:

> "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."

Section 7682, General Code, provides in part:

> "Each board of education may admit other persons upon such terms or upon the payment of such tuition within the limitations of other sections of law as it prescribes. * *"

Considerable difficulty is encountered in construing and applying the provisions of Section 7681, supra, for the reason that the words "wards" or "apprentices" are held to have been used in a sense other than their strict technical sense. A case which has been frequently cited in connection with matters of this kind is *Yale* vs. *Middle West School District,* 59 Conn., 489, where the statute

provided that "the public schools of the districts shall be open to all children over four years of age in the respective districts", it was held that under the construction given to such language it was not necessary that a child be domiciled in the district, but that it was enough if it was residing in the district in the ordinary sense of that term, and that a child of school age whose parents resided in another state, but who had lived for several years, and expected to continue to live, in the family of a domiciled resident of the district, was entitled to the privileges of the district schools. On page 492 of said report, Andrews, C. J., uses the following language:

> "A construction so narrow and technical as is claimed by the defendant would seriously impair the usefulness of the school laws and would defeat various provisions of the statutes. The state is interested to have all the children educated in order that they may become good citizens. Experience has demonstrated that it cost the public much more to support one ignorant or vicious person than to educate many children. On the simple ground of economy the state cannot afford to permit any child to grow up without being sent to school. The school laws recognize this fact and their provisions are framed accordingly. If any child is actually dwelling in any school district, so that some person there has the care of it, and is within the school age, * * then that child must go to the public school."

A former Attorney General considered this question at considerable length, in an opinion which may be found in the Opinions of the Attorney General for 1927, page 160, where it is held:

> "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 the course of this opinion, speaking with reference to the provisions of Section 7681, General Code, the Attorney General said:

> "Looking to the history and purpose of the law I have, after an examination of many authorities, come to the conclusion that it is impossible to lay down any general rule in terms more plain than the statute itself and that each individual case must be decided in the light of the circumstances and facts peculiar to the particular case.

I am of the opinion that a liberal construction should be given to the term 'ward' as used in this statute; and that if a child be given in good faith by its parents to some other person, and that if the other person obtains the full control and custody of the child and provides such child with food, clothing and shelter, and that it be intended by all parties concerned that the child is leaving the home of its parents to reside with the other person, then such child stands in the relation of a ward to the person to whom the parents have granted the child's custody and would be entitled to attend school in the district of which this person is an actual resident. On the other hand, there would be no question but that parents cannot farm out their children to another, merely temporarily giving him custody for the purpose of having them attend school without paying tuition.

The whole question narrows down to a question of fact which must be gathered from all the circumstances surrounding each particular situation."

The general principle of law applicable to cases of this kind, is stated in Ruling Case Law, Vol. 24, page 624, as follows:

"Although there is some conflict of authority among the decisions as to what constitutes a residence which will entitle the child to school privileges, statutes providing for a free public school system are, by the weight of authority, construed as evidencing an intention on the part of the state that all children within its borders shall enjoy the opportunity of a free education, and in determining whether a person is or is not a resident in a school district within the meaning of such a rule, the usual and ordinary indicia of residence or the absence thereof shall be the proper guide. In line with this construction of the statutes, residence entitling an infant to school privileges is distinguished from domicil, or the technical and narrow use of the term 'residence', for the purpose of suffrage or other like purposes, and it is construed in a liberal sense as meaning to live in, or be an inhabitant of, a school district, the purpose being not to debar from school privileges any child of school age found within the district under the care, custody, or control of a resident thereof. Such rule does not usually require that there shall be a legal domicil, but it is sufficient if the child and its parent, or the person in loco parentis, are actually resident in the district, with apparently no present purpose of removal. * * For school purposes a child's residence is not necessarily the residence of its parent or parents, though generally a child will be held to reside where its parents reside. If it has assumed a permanent home with some other person, the school residence is with such person.

See also *I. O. O. F.* vs. *Board of Education,* 90 W. Va., 8; 110 S. E. 440, *Crain* vs. *Walker,* 222 Ky. 828, 2 S. W., 2d, 654, 48 A. L. R. 1092 n.

In considering questions of this kind, some weight must be given to the laws relating to compulsory education. In Section 7762, General Code, it is provided that:

"A child between six and eighteen years of age is of compulsory school age for the purposes of this chapter."

It is further provided in the said section that the parent, guardian or other person having the care of a child of compulsory school age, shall instruct him or cause him to be instructed in the manner provided for by other sections of the law, unless he is employed on an age and schooling certificate or shall have been determined in the manner provided by law, to be mentally incapable of profiting substantially thereby. Section 7763, General Code, provides in part, as follows:

> "Every parent, guardian, or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction, must send such child to a public, private or parochial school for the full time the school attended is in session, which shall in no case be for less than thirty-two weeks per school year."

By the terms of Section 12974, General Code, it is provided that:

> "Whoever being a parent, guardian or other person having care of a child of compulsory school age violates any of the provisions of sections 7762, 7762-5, 7763, 7765-1, 7773 or 7773-1, General Code, shall upon conviction be fined not less than five dollars and not more than twenty dollars, or the court may in its discretion require the person so convicted to give bond in the sum of one hundred dollars with sureties to the approval of the court, conditioned that he will cause the child under his charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law; and upon the failure or refusal of any such parent, guardian or other person to pay said fine and costs or furnish said bond according to the order of the court, then said parents, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days."

Section 7775, General Code, provides in part, as follows:

> "If a child is residing apart from its parents and the parents are not residents of the given school district, the person in whose residence the child resides shall be deemed the person in charge of the child for the purpose of section 7773, 7773-1 or 7774, General Code. * * *"

In an opinion of a former attorney general, reported in Opinions of the Attorney General, for 1932, at page 1472, in which occasion arose to consider the provisions of the statutes referred to above, in connection with the right of certain children whose parents were dead and whose guardian lived in Cuyahoga County and had sent the children to live with relatives in an adjoining county, to attend the public schools in the district where they resided, the children had no other home and the guardian was paying the people with whom they lived, for their board and lodging. The question arose whether or not the children might attend school in the district where they were living, without the payment of tuition. The Attorney General held, as stated in the syllabus of this opinion:

> "1. When children of compulsory school age are in a school district, and 'actual residents' of the district 'have the care' of them, or are

'in charge' of them, as those terms are used in the laws relating to compulsory education, and under such circumstances that those 'actual residents' are required to send the children to a public, private or parochial school as provided by Section 7763, General Code, or be subject to the penalties imposed by Section 12974, General Code, if they fail to do so, the board of education of the school district must admit these children to the privileges of the public school of the district, even though someone may be liable under the law for their tuition and the said tuition is not paid.

2. By force of Section 7681, General Code, a child who resides with persons other than his parents or guardian, under conditions whereby the person with whom he resides stands in loco parentis to him, may attend school in the district where those persons are 'actual residents', free of charge. Whether or not the child's residence is of the nature described above, is in all cases a question of fact to be determined from all the pertinent facts and circumstances surrounding the situation. Opinion of the Attorney General for 1927, page 160, reviewed and approved.

3. While the new Probate Code provides that it is the duty of the guardian of a minor, when necessary, to provide for the maintenance and education of his ward, and that the cost thereof may be paid from the estate of the minor to the extent his estate justified, it provides with equal positiveness that no part of the estate may be used for the purposes mentioned unless ordered and approved by the court having jurisdiction in the premises."

In the course of the opinion, it was said:

"As stated above, the mere fact that the relatives with whom the children in question reside are being paid for their care, is not conclusive that they do not stand in loco parentis to the children, or that the court would allow something in addition to school tuition. It is possible that these relatives are not financially able to minister to the physical needs of the children, and it is necessary that they be supplied with funds so that they may properly feed and clothe the children."

A distinction is sometimes made between what have been called "boarding homes" and "foster homes". This distinction has been pointed out in a former opinion of this office, and it has been generally held that where children are placed in what are strictly boarding homes in contradistinction to foster homes, the district in which the boarding home is located is entitled to collect tuition, if they attend school in that district. On the oher hand, if the home in which they are living may be regarded as a foster home they are entitled to attend the public schools in that district without the payment of tuition. See Opinions of the Attorney General for 1929, at page 195 and for 1931 at page 1177.

As cases arise between the two extremes it is necessary to weigh all the circumstances and conditions surrounding the individual situation. Experience has shown that no set formulae can be made to fit all situations. It must at all times be borne in mind that the public school system is state-wide in its operation, that school districts exist for purposes of administration and that the educational needs and welfare of the child are of primary importance. It is the clear intent and purpose of the law that no child within the borders of the state,

shall be deprived of an opportunity to go to school. Even with this guiding principle in mind and with all the facts and circumstances incident to particular cases known, questions of this kind are oftentimes very difficult to answer. In any event, the surrounding facts and circumstances of any particular case must be weighed, and it is necessary that this be done in the perspective of their local setting. It is difficult for this office to pass definitely on individual cases for the reason that it is difficult to bring to the attention of the Attorney General all the pertinent facts and circumstances so that he may consider them in their relation to each other and apply the law to those particular facts. The situation is considerably different than if the case were presented to a court where presumably all the facts and circumstances in the perspective of their local setting are before the court.

In the instant case, if the mother of these children has placed them in a private home for the purpose of having a home provided for them, not a mere boarding home, and in such a way that the persons with whom they are placed stand in loco parentis to the children, I am of the opinion that they may attend school in the district where this home is located, without the payment of tuition, even though the mother may pay for their board and care. If, however, the mother has placed these children in this home temporarily, and for the purpose of their attending school, and the persons in charge of the home are boarding and caring for the children with a view to profit, or if the home is conducted as a business enterprise, so that it may be classed as a boarding home, the mother would be required under the law to pay tuition, if they attend the schools of the district.

Specifically answering your inquiry it is my opinion:

1. 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.

2. Where the parents of the child place that child in a boarding house which is being conducted as a business enterprise for profit and which lies outside the school district in which the parents reside, the child is not entitled to attend the schools of the district in which the boarding house is located without the payment of tuition.

3. Where the parents of a child place the child in a home outside the district of the residence of the parents, temporarily, and for the express purpose of that child attending school in the district where it has been placed, the parents are liable to the school district in question, for tuition for the child's attendance in school.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2046.

APPROVAL, NOTES OF RUNYAN RURAL SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—$200.00.

COLUMBUS, OHIO, December 21, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.