

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-16 was overruled as a result of legislative enactment by 2018 Op. Att'y Gen. No. 2018-016.

OPINION 65-16

Syllabus:

The school districts of Ohio are not empowered to make tuition payments pursuant to Section 3313.64, Revised Code, to schools or school districts outside the State of Ohio.

To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, January 28, 1965

Your request for my opinion queries whether a local school district either must or may pay all or any part of the tuition for a pupil of the schools of that district who has been placed in a parochial correctional school in the State of Pennsylvania.

Provisions for the payment of the tuition of an inmate of a children's home or institution who is not a school resident of the district in which the home or institution is located are found in Section 3313.64, Revised Code, which reads in pertinent part as follows:

"The schools of each city, exempted village, or local school district shall be free to all school residents between six and twenty-one years of age, * * * School residents shall be all youth who are children or wards of actual residents of the school district. District of school residence shall be the school district in which a school resident is entitled to attend school free. Inmates of the proper age of county, semipublic, and district children's homes shall be admitted after the manner described in section 3313.65 of the Revised Code. The board may admit the inmates of a private children's home or institution located in the district; provided any child who is an inmate of such a home or institution and previous to admission was a school resident of the school district in which such home or institution is located shall be entitled to free education; and, provided any such inmate who attends the public school was, prior to admission to such home or institution, a school resident of another school district of the state, tuition shall be paid by such school district in the manner provided for the payment of tuition by section 3317.08 of the Revised Code. For any such inmate who attends the public schools and who prior to admission to such home or institution was not a school resident of the state, such home or institution shall pay such tuition.

* * *

"The clerk of the school district in which county, semipublic, or district children's home is located shall furnish the superintendent of public instruction a report of the names and former residence of all inmates of such homes in attendance in the schools of the district, the duration of such attendance, and such other information as the superintendent requires, A child who is an inmate of a county, semi-public, or district children's home was a school resident of the district in which such home is located shall be entitled to an education at the expense of such school district; any other inmate of such home shall be educated at the expense of the school district in which he was a school resident at the time of placement. The district of school residence shall pay tuition in such amount as shall be computed pursuant to the formula provided in section 3317.08 of the Revised Code, excepting that such formula shall be calculated as though the pupil were in attendance in the district of his school residence, and the tuition cost shall be computed by applying the factors in such formula to the district of school residence. The

"The excess cost, if any, of schooling such inmate represented by the difference between the tuition obligation of the district of residence and the tuition cost for such pupil computed pursuant to section 3317.08 of the Revised Code by the district of attendance shall be assumed and paid by the state of Ohio from state funds.

"The superintendent upon receipt of such report shall approve and pay the expense of education of such pupils in the same manner as tuition is credited and paid for other tuition pupils. Any inmate of a county, semipublic, or district children's home who at the time of placement was not a school resident of any school district in Ohio shall be educated at the expense of the individual, public authority, or agency making such placement."

Section 3313.65, Revised Code, provides that inmates of a county, semipublic or district children's home shall have the advantage of the privileges of the public schools, and that they shall attend schools in the district wherein such home is located. Thus the reference to Section 3313.65, Revised Code, in Section 3313.64, supra, has no bearing upon the question you have posed in your letter.

You will note that the initial sentence of Section 3313.64, supra, states that the schools of the various school districts of the state shall be free to all residents between ages six and twenty-one. The various school districts referred to in Section 3313.64, supra, are public school districts, created by Sections 3311.01 to 3311.04, inclusive, Revised Code,

pursuant to the directory language of Section 3 of Article VI, Constitution of Ohio. Thus the references in Section 3313.64, supra, to payment of tuition for the schooling of inmates of children's homes or institutions refers to their education in public schools.

Inmates of private homes or institutions, who were school residents of the district wherein the private home or institution is located may attend the public schools of that district free of tuition payments. Those inmates of private homes or institutions who were, previous to their admission to such home or institution "a school resident of another school district of the state" as provided in Section 3313.64, supra, may attend the public schools of the district wherein the home or institution is located and the tuition of such inmate shall be paid by such other school district. Since the language of the statute is "another school district in the state", it is obvious that the legislature, in enacting Section 3313.64, supra, did not intend that tuition be paid to out-of-state private school authorities.

It has been well established as a part of the jurisprudence of Ohio that school boards, being creatures of statute, have only such powers as are clearly and expressly granted to them and such implied powers as are necessary to execute their express powers. Verberg v. Board of Education, 135 Ohio St., 246. Thus the apparent lack of statutory authority in either Section 3313.64, supra, or elsewhere empowering school districts to pay tuition for students now attending school outside the state of Ohio leads to no other conclusion than that it is neither mandatory nor permissible for a school district of the State of Ohio to pay tuition for one of its former students who now attends school outside the state.

Therefore, it is my opinion and you are advised that the school districts of Ohio are not empowered to make tuition payments pursuant to Section 3313.64, Revised Code, to schools or school districts outside the State of Ohio.