

## OPINION NO. 75-019

## Syllabus:

1. Where a mentally retarded resident of Cuyahoga County has been placed by the Department of Mental Health and Mental Retardation in a nursing home in another county, the individual's "school residence" becomes the school district in which the nursing home is located; but if he is placed in a children's home in the other county, his "school residence" remains in Cuyahoga County. R.C. 3313.64.

2. Where such a person's "school residence" remains in Cuyahoga County, that county is financially responsible for his training. R.C. 3313.64; R.C. 5127.04.

3. Where such a person's "school residence" shifts to the "host" county, that county is financially responsible for his training. R.C. 3313.64; R.C. 5127.04.

4. The state is responsible for any deficiency in the tuition paid by Cuyahoga County to the "host" county where the mentally retarded person's "school residence" remains in Cuyahoga County; and the state is required to subsidize the "host" county for each mentally retarded person enrolled in its training program. R.C. 3313.64; R.C. 5127.03.

5. Where an adult mentally retarded person is placed by the Department of Mental Health and Mental Retardation in a nursing home in another county, the financial responsibility for his training in the "host" county training program rests upon the "host" county.

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To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio  
By: William J. Brown, Attorney General, March 21, 1975

I have before me your letter which reads as follows:

"The problem which prompts this request for your opinion centers about the fact that there are many retarded persons whose original residence is in Cuyahoga County, but who are now living in many state and private residential facilities throughout the state of Ohio. When such persons are capable of being educated, they are placed in programs operated by the local county boards of mental retardation. Recently, several of these counties have refused to accept placing of such persons in

their educational programs unless the county from which the person came agrees to pay a per capita tuition.

"Cuyahoga County has approximately 2000 persons living in facilities outside Cuyahoga County because residential care facilities are not available within this county. We have been advised that other counties are in a similar position and we, therefore, suggest the importance of this problem on a statewide basis with respect to increased costs for maintenance and education of retarded persons.

"The questions then arise:

"1. What is the residence of a retarded person whose parents live in Cuyahoga County and who is currently living in another county because the Case Management Services of the State of Ohio, Regional Office, has placed him in a nursing home in that other county?

"2. To the extent that it is responsible for serving a retarded person presently in this county, is Cuyahoga County responsible for providing any financial support for a person's educational program while he is living in another county?

"3. What responsibility does the "host" county have for providing educational services for a retarded person?

"4. Does the fact that the State of Ohio is involved in such a case alter the person's residency status? (i.e. the state is the legal guardian of the retarded person.)

"Because this is an ongoing problem of statewide application your opinion is respectfully requested."

As I understand it, these retarded persons originally resided in Cuyahoga County. Since they require a type of institutional care which was not available in Cuyahoga County, the Department of Mental Health and Mental Retardation assigned them to state or private residential facilities, specifically nursing homes, in other counties, (R.C. 5123.03, 5123.12, 5125.23), and placed them in the program operated by the county board of mental retardation of the particular county to which they had been assigned (R.C. Chap. 5126. and 5127.).

The General Assembly recognizes two classes of mentally retarded persons, those who are "educable", and those who are "trainable." The former are capable of profiting from the educational programs provided in the public schools, perhaps through the addition of special classes for the handicapped; the latter are those whose degree of retardation is such as to render them incapable of profiting from public school education, and they are, consequently, ineligible for enrollment in the public schools. R.C. 5127.01; R.C. 3323.01 et seq.; 1973 Op. Att'y Gen., No. 73-019 and No. 73-014. I

take it that the persons with whom you are concerned are in the "trainable" class since, although originally legal residents of Cuyahoga County, they are assigned, as wards of the State, to residential facilities in other counties, and are placed in the programs operated by the county boards of mental retardation. These local boards were created by the General Assembly specifically to operate programs for the "trainable" retarded. R.C. Chap. 5126 and 5127. You ask, what is the "school residence" of such persons? And who is financially responsible for their education - Cuyahoga County, the "host" county, or the State?

The definition of the term, "school residence", appears in R.C. 3313.64 which provides in part as follows:

"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, \* \* \*. 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. \* \* \*"  
(Emphasis added.)

This has been interpreted to mean that anyone between five and twenty-one years of age is entitled to a free education in the public schools of the school district within which he resides with a parent or a guardian. In 1972 Op. Att'y Gen. No. 72-030, after referring to numerous opinions of my predecessors, I said:

"\* \* \*The general effect of all those Opinions is that when a child resides permanently with an actual resident of a school district who stands in loco parentis, the child may attend the public schools of such district without the payment of tuition, even though his actual parents reside in some other school district. \* \* \*"

Your letter states that mentally retarded persons have been removed by the State Department from their parents' residences in Cuyahoga County and placed in nursing homes in other counties. The superintendent of the home, therefore, now stands in loco parentis to these individuals. See R.C. 5123.03; 1971 Op. Att'y Gen. No. 71-072. I conclude that the school district in which the nursing home is located is the "school residence" of the mentally retarded persons who reside in such home, and that they are entitled to a free public education in that district. A program for the training of the mentally retarded is considered to be free public education. 1972 Op. Att'y Gen. No. 72-022.

It should be noted that R.C. 3313.64 also contains a special provision for inmates of children's homes. Although such an inmate is permitted to attend the schools of the district in which the home is located, his "school residence" remains in the school district in which he resided at the time of placement in the home, and that district is responsible for his tuition. 1971 Op. Att'y Gen. No. 71-022.

Your second, third and fourth questions have, for the most part, already been answered by what has been said above. Where

a mentally retarded person, whose parents reside in Cuyahoga County, is placed by the state Department in a nursing home in a "host" county, he acquires a "school residence" in the school district in which the nursing home is located, and he is entitled to a free education in the program administered by the county board of mental retardation of the "host" county. R.C. 3313.64; R.C. 5127.04.

But when a mentally retarded person, who resides in Cuyahoga County, is placed in a children's home in a "host" county, whether it is a county, semipublic, district or private children's home, he retains his "school residence" in Cuyahoga County, which must pay tuition to the "host" county for his participation in the program administered by the "host" county's board of mental retardation. The amount of such tuition is to be determined by the cost of education under a similar program in Cuyahoga County. R.C. 3313.64; R.C. 5127.04.

If the cost of such education in the "host" county exceeds the tuition paid by Cuyahoga County, such excess shall be paid by the State of Ohio. R.C. 3313.64. The state also provides an annual subsidy of not more than \$450 for each mentally retarded individual under twenty-one years of age enrolled in such a training program. R.C. 5127.03.

Finally, R.C. 5127.01(B) provides for the admission of mentally retarded persons over twenty-one years of age to the training programs operated by county boards of mental retardation, if such persons have been determined to be unemployable; and under R.C. 5127.03 the state is required to make payments of not more than \$600 per year to the county board for each such individual in its training program. Under R.C. 5126.03 the board of county commissioners is required to provide sufficient funds to enable the county board of mental retardation to carry out its programs. As has already been noted, such programs are a form of free public education, and one of my predecessors has specifically held that tuition cannot be charged even if the participants are adults. 1962 Op. Att'y Gen. No. 2787. If there are any such adults among the approximately 2000 former residents of Cuyahoga County who have been transferred to residences in other counties, they certainly are not in children's homes, but rather in nursing homes. The counties apparently did not, as they might have, enter into a contract covering financial responsibility for the training of such persons. R.C. 5126.03; see also 1973 Op. Att'y Gen. No. 73-026. I conclude, therefore, that the financial responsibility for the training of such adults would rest, not upon Cuyahoga County, but upon the "host" county.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. Where a mentally retarded resident of Cuyahoga County has been placed by the Department of Mental Health and Mental Retardation in a nursing home in another county, the individual's "school residence" becomes the school district in which the nursing home is located; but if he is placed in a children's home in the other county, his "school residence" remains in Cuyahoga County. R.C. 3313.64.

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5. Where an adult mentally retarded person is placed by the Department of Mental Health and Mental Retardation in a nursing home in another county, the financial responsibility for his training in the "host" county training program rests upon the "host" county.