1291.

TUITION—PERSONS WHO STAND IN LOCO PARENTIS TO YOUTHS OF SCHOOL AGE ARE LIABLE FOR TUITION WHEN SUCH YOUTHS ATTEND SCHOOLS IN DISTRICTS OTHER THAN THE ONE WHEREIN SUCH PERSONS RESIDE—DETERMINATION OF WHO STANDS IN LOCO PARENTIS, QUESTION OF FACT.

SYLLABUS:

1. *School districts, wherein reside persons who stand in loco parentis to youths of school age, are liable for the tuition of such youths when they attend school in districts other than the one wherein such persons reside, providing the districts in which the persons who so stand in loco parentis are actual residents, do not afford proper school privileges for such youths.*

2. *The determination of who stands in loco parentis to children attending the public school and to whom such children bear the relation of ward for school attendance purposes is in all cases a question of fact to be determined in the light of the circumstances connected with the situation.*

COLUMBUS, OHIO, November 25, 1927.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"The following question has just been submitted to me for the purpose of securing your opinion as to the liability of Jackson Township School District for tuition for N. W., a minor, who is attending school in St. Johns Rural School District, Mercer County, Ohio, and who is at present making his home at the home of one V. in Jackson Township Special School District, Auglaize County, Ohio.

The facts in relation thereto are as follows: The above designated minor is about sixteen years of age, and both of his parents are deceased. Prior to his coming to the home of F. V. in Jackson Township Special School District, he made his home with his stepmother, in the village of Fort Loramie, Shelby County, Ohio, and resided there with the family. For about a year last past he has been at the home of F. V., a farmer residing in Jackson Township Special School District, Auglaize County, Ohio.

In view of the fact that the school he is attending in St. Johns Rural School District, Mercer County, Ohio, is nearer to the V. home than the nearest school in Jackson Township Special School District, he has been attending High School in St. Johns Rural School District, Mercer County, Ohio.

The question arises, what board is liable for the tuition? I have contended that the residence of this minor is the village of Fort Loramie, Shelby County, Ohio, and if that be correct, said board of education would be liable for the tuition for the boy. If under these circumstances, his residence should be construed to be in Jackson Township Special School District, then the Jackson Township Special School District would be liable for his tuition. I might add that the board of education of St. Johns Rural School District, Mercer County, Ohio, has presented statements to both the Fort Loramie Village School District, Shelby County, Ohio, and the Jack-

son Township Special School District, Auglaize County, Ohio, and both have taken the position that they are not liable for his tuition.

I would be pleased to have you advise me at an early date, and give me your opinion as to which school district is obligated, under the law, to pay for the tuition of this minor, the Fort Loramie Village School District, Shelby County, Ohio, or the Jackson Township Special School District, Auglaize County, Ohio."

Section 7681, General Code, reads in part as follows:

"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 7747, General Code, reads in part as follows:

"The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. * * *

The district superintendent shall certify to the county superintendent each year the names of all pupils in his supervision district who have completed the elementary school work and are eligible for admission to high school. The county superintendent shall thereupon issue to each pupil so certified a certificate of promotion which shall entitle the holder to admission to any high school. Such certificate shall be furnished by the superintendent of public instruction."

Section 7748, General Code, reads in part as follows:

"A board of education providing a third grade high school shall be required to pay the tuition of graduates from such school, and of other children who have completed successfully two years of work in a recognized high school, residing in the district at a first grade high school for two years, or at a second grade high school for one year and at a first grade high school for one additional year.

A board providing a second grade high school shall pay the tuition of graduates, and of other children of like advancement, residing in the district at a first grade high school for one year. No board of education is required to pay the tuition of any pupil to high school for more than four school years.

A board of education may pay the tuition of all high school pupils residing more than four miles by the most direct route of public travel from the high school provided by the board when such pupils attend a nearer high school, or in lieu of paying such tuition the board of education may pay for the transportation to the high school maintained by the board of the pupils living more than four miles therefrom. A pupil living in a village or city district who has completed the elementary school course and whose legal residence has been transferred to a rural district in this state before

he begins or completes a high school course, shall be entitled to all the rights and privileges of a resident pupil of such district."

Your inquiry does not state whether or not the school district in which Mr. V. resides maintains a high school, or whether the minor to whom you refer has completed the elementary school work and is eligible for admission to high school. I assume, however, that he is eligible for admission to high school else he would not have been admitted to the high school in St. Johns rural school district, where you state he has been attending school. Neither do you state whether or not there has been a guardian appointed for the boy, and for the purposes of this opinion I will assume that he does not have a duly appointed guardian.

If it should be determined that the boy in question is a child, ward or apprentice of an actual resident of Jackson township school district, or that he works to support himself by his own labor in said district, he would be entitled to the school privileges afforded by the schools in that district, as provided by Section 7681, supra.

If Jackson township school district maintains a high school he could not demand of it that his tuition be paid in St. Johns school district merely because the high school in the St. Johns district was more accessible to him. If Jackson district maintains a high school of the grade to which he was entitled to admission within four miles of his residence the district could not be required to pay his tuition at some other school. If no proper school be provided for him within four miles of his residence he can attend some other school and the district to which he would be entitled to attend school free if proper school privileges were therein provided would be required to pay his tuition as provided by Sections 7747 and 7748, supra.

It will be noted that by the provisions of Section 7748, supra, boards of education may pay the tuition of high school pupils who reside more than four miles by the most direct route of public travel from the high school provided by the board when such pupils attend a nearer high school, or in lieu thereof provide transportation for the pupil to the high school maintained by the board. It has been held in the case of *Sommers* vs. *Board of Education, et al.,* 113 O. S. 177:

> "While a board of education has an option as to the method by which it will make high school branches accessible to school children in the district, it cannot, by refusing to exercise any one of the options, absolve itself from liability."

The important question involved in your inquiry is where the school residence of the youth in question really is. School residence is determined by a consideration of the question of whether or not the youth in question is a child, ward or apprentice of an actual resident of the district as stated in Section 7681, supra, or whether or not the youth works within the district and thereby supports himself by his own labor. It will be noted that school residence and actual residence are not determined by the same standards. The situs of residence whether actual residence or school residence is a question of fact to be determined in each case from all the facts and circumstances.

In Opinion No. 106, rendered by this department on February 26, 1927, and addressed to the Honorable C. Luther Swaim, prosecuting attorney of Clinton County, wherein questions relating to school residence were considered, it was 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 this connection your attention is directed to former opinions of this department reported in Opinions, Attorney General, 1916, Vol. I, page 576; 1918, Vol. I, page 543, and 1918, Vol. II, page 367.

Inasmuch as Mr. V. is a farmer and the boy in question is an orphan it might be that he is working for his maintenance and support, and would therefore come within the class of youths who work to support themselves by their own labor, and for that reason would be entitled to have furnished to him school privileges by the school district in which he is so employed.

If, however, he is not so employed, the question arises whether or not he is a ward of Mr. V. in the sense that the term ward is used in Section 7681, supra.

The circumstances in this particular case are such that the school residence of this boy in any case would be solely a question of fact. Ordinarily, the school residence of a minor is where his parents are living, in the absence of any facts showing emancipation or an intent on the part of his parents to change the minor's residence would be determined to be the same as the actual residence of the parents. Natural parents have the primary right to the custody and earnings of their children, and are under a legal obligation to support them and to send them to a public, private or parochial school in accordance with the laws for compulsory education, as contained in Sections 7763 et seq., General Code. Failure to send them to school subjects the parents to a penalty as provided by Section 12974, General Code.

No such legal obligation exists, however, as against step-parents unless they assume control or custody of the child. An orphan, whose step-parents do not choose to assume the responsibility for the child's care and maintenance and who does not have a duly appointed guardian, would become the ward for school residence purposes of any one who took upon himself the responsibility of providing for the child. 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. * * *."

The person who is charged with the duty of sending children to school may be the parent, guardian or the person having charge of them. The locus of the children for school purposes is the school district wherein the parent, guardian or the person having charge of them, as the case may be, is an actual resident.

In determining whether or not a person *bona fidely* has charge of the child, thus creating a school residence for the child, or whether or not the child's staying

in some district other than the one wherein his parents reside is merely for the purpose of enabling him to attend some certain school without paying tuition, consideration must be given to all the facts and circumstances connected with the matter the most important of which is the intention of the parents or guardian of the child or the person with whom the child is living.

The intent of natural parents when their child leaves home and goes to reside with someone else would be the controlling factor in determining the relation the child bears to its new location, they being lawfully charged with the obligation to support and educate the child and having the reciprocal right to its custody and earnings. The intent of step-parents, however, under the same circumstances could not be said to have similar weight to that of natural parents in determining this question. Step-parents do not have similar rights and obligations with respect to stepchildren that natural parents bear to their children and the intent of step-parents when stepchildren reside apart from them might or might not, according to the circumstances, be determinative of the child's relationship to the school district to which he had gone upon leaving the home of the step-parents.

When step-parents receive stepchildren into their home and educate and support them, they bear the same relation to them that natural parents would and they have the same reciprocal rights; but when the child leaves their home and they no longer choose to assume the responsibility of caring for the child, their obligations with reference thereto cease, as well as their right to the custody and earnings of the child.

It is stated in 29 Cyc., 1667:

> "A stepfather does not merely, by reason of the relation, stand in loco parentis to his stepchild; but where the stepfather receives the stepchild into his family and treats it as a member thereof, he stands in place of the natural parent, and the reciprocal rights, duties, and obligations of parent and child continue as long as such relation continues.
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> A stepfather has, by reason of the relation merely, no right to the custody of his stepchildren, but he may be entitled to the custody if he stands in *loco parentis* to the children."

In the case of *Wing, Guardian* vs. *Hibbert*, 8 O. Dec., page 68, the court said:

> "A stepfather is under no obligation to support the child of his wife by a former husband; yet, if he receives the child into his own home, and educates and supports him, discharging to him all the duties of a parent, he would be entitled to claim the earnings of the child, and is liable for the support of such child, and may be bound by his contracts for necessaries."

Unless stepchildren are in fact living in a filial relation to their step-parents there is no legal relation between them. Under such circumstances the intent or desire of the step-parents as to where the children reside would have very little if any weight in determining the relationship of the child to his place of residence. The mere fact, however, that the children and their step-parents live in different houses or in different school districts does not necessarily mean that they do not live in a filial relation to each other. The entire matter is a question of fact which must be determined in each instance by the facts peculiar to the particular case.

In the case stated in your inquiry, if the boy can be said to be a ward of Mr. V., who is an actual resident of Jackson Township School District, or if the boy supports himself by his own labor in Jackson Township School District, and if the said district does not maintain a high school of the grade to which the boy is entitled to admission, within four miles of the residence of Mr. V., or furnish transportation to such a school within the district, it is liable for the tuition of the pupil in St. Johns district where he has been attending school. If on the other hand the step-parents stand in loco parentis to the boy, retain charge of him and pay his board with Mr. V. merely for the purpose of his attending St. Johns high school, the school district wherein these step-parents are actual residents would be liable for the boy's tuition in St. Johns school and would be liable for his tuition if he attended a high school in Jackson Township School District and resided with Mr. V. under such circumstances, if the district wherein the step-parents reside does not maintain a high school of the grade to which the boy is entitled to admission.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1292.

TAX AND TAXATION—PUBLICATION OF RATES—MANDATORY—HOW PUBLISHED.

SYLLABUS:

1. *By the terms of Section* 6252, *General Code, the publication of the rates of taxation should be made in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat; and such publication should be made for six successive weeks as provided in Section* 2648, *General Code. If two newspapers of opposite politics are not published at the county seat, publication should be made in one such newspaper if there be one. There is no authority for the publication of such notice in a newspaper which is not published at the county seat except in cities other than a county seat having a population of eight thousand inhabitants or more as provided in Section* 6252, *General Code.*

2. *Under the provisions of Sections* 2648 *and* 6252, *General Code, it is mandatory upon the county treasurer to publish the rates of taxation.*

COLUMBUS, OHIO, November 25, 1927.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

> Under Section 2648 of the General Code of Ohio, construed in connection with Section 6252, General Code, by authority of *State* vs. *Commissioners*, 7 ONP 239, it has been called to my attention by the treasurer of Brown County, Ohio, together with the editor of the Ripley Bee, a Republican newspaper published at Ripley, Ohio, in said Brown County, that it is necessary to publish the rates of taxation in both the Democratic paper, published at the county seat, and the Republican paper (which is the only Republican newspaper in Brown County) published at Ripley, Brown County.