

1402.

SCHOOLS—HOW "AGGREGATE DAYS OF ATTENDANCE OF PUPILS" DETERMINED— PUPILS FROM CHILDREN'S HOME MUST BE COUNTED—ALSO NON RESIDENT PUPILS ATTENDING OHIO HIGH SCHOOL—WORD "PUPIL" DEFINED.

The pupils of a school coming from a county, semi public or district children's home must be counted in the "aggregate days of attendance of pupils."

Non resident pupils attending an Ohio high school must be counted in obtaining the "aggregate days of attendance of pupils" of such high school.

Pupil is used in the school law generally in its ordinary meaning and is more comprehensive than youth as used for the purposes of enumeration therein.

COLUMBUS, OHIO, July 3, 1920.

Department of Public Instruction, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your letter, which is as follows:

"Will you kindly render an opinion in answer to the following questions on taxation:

(1) Does the attendance of children at the school of a county children's home constitute a part of the aggregate days of attendance of the school district in which such home is located for the purpose of distribution of school funds under the New School Revenue Law?

(2) Does the attendance of students residing in another state at a high school situated in Ohio constitute a part of the aggregate days of attendance of the school district in which such high school is situated for the purpose of distribution of funds in accordance with the provisions of the New School Revenue Law?"

Your inquiries have been prompted, no doubt, by the failure of the school law to expressly direct what is to be included in the "aggregate days of attendance of pupils." This phrase is new to the school law, being found for the first time therein in house bill 615. However, in house bill 615, in section 7787 thereof we find the following:

"The aggregate days of attendance of pupils in a school which is closed for more than five consecutive school days during the year on account of an epidemic of disease or other emergency requiring such closing shall be ascertained by multiplying the average daily attendance at such school by the number of days such school would have been in session, but for such emergency.

In computing the average days of attendance in night schools, extension schools, summer schools, and other special schools operated on an abnormal daily time basis, six hours of attendance on the part of a pupil shall be taken as the equivalent of one day's attendance."

Having only the above quotation for a guide as to the meaning of "aggregate days of attendance of pupils" in these particulars for the further meaning of the phrase we are obliged to have regard to the plain meaning of the words as used in the text of the law where found.

"In construction of statutes legislative intent must be sought first of all in the language of the statute itself. * * *"

Black Interpretation of Laws, Section 35.

Section 3088 G. C. declares the inmates of a county, semi-public or district children's home who are of school age shall be given an elementary education in the manner described in section 7676 G. C.

Section 7676 G. C. provides:

"That the inmates of the homes mentioned in section 3088 shall have the advantage of the privileges of the public schools; that so far as possible the children shall attend such school or schools in the district within which such home is located; that whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the board of education having jurisdiction over the school district within which such home is located. * * *"

Section 7677 requires that a report be made twice each year by the superintendent of the school district in which such home is located to the county auditor. Such report, among other things, shall show the average per capita cost of conducting a school at the home, or the average per capita cost, except for improvement and repairs, of all the elementary schools in such district in case such inmates attend such a school, for the preceding six months. Such report shall also give the *names and former residence* of all inmates in attendance at school, the duration of attendance, and such other information as the county auditor may require to carry out the provisions of section 7678, which section requires, in part:

"A child who is an inmate of a county, semi-public or district children's home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of its *last residence*. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of its last residence. The county auditor upon receipt of the above report from the board of education shall, before making a semi-annual distribution of taxes collected, estimate the amounts chargeable to the various school districts for tuition of inmates of such home, and shall transfer to the proper school funds such amounts. In case there are inmates from another county, the county auditor of the county in which the home is located shall certify the amount to the auditor of the county of such children's residence who shall forthwith issue his warrant on treasurer of the same county for such amount, and shall proceed to apportion the proper amounts to the various school districts of such county in the manner described above."

Section 7681 G. C. is 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. * * * Inmates of the proper age of county, semi-public and district children's homes shall be admitted after the manner described in section 7676. The board of education may admit the inmates of a *private* children's home or *orphan asylum* located in the district, with

or without the payment of tuition fees, as may be agreed upon; provided any child who is an inmate of such a home or asylum and previous to admission was a resident of the school district in which such home or asylum is located shall be entitled to free education; and provided, any such inmate who attends the public schools was prior to admission to such home or asylum a resident of another school district of the state of Ohio and a tuition fee is charged, the same method of reimbursement shall be followed as is provided in section 7677 and 7678; and provided further, for any such inmate who attends the public schools and who prior to admission to such home or asylum was not a resident of the state of Ohio, such home or asylum shall pay from its own funds such tuition as may be agreed upon. * * *"

It is to be noticed that in the above section the legislature provides for the pupils of a private children's home or orphan asylum, in which case tuition may be agreed upon and paid or not paid, as agreed. And further it provides for the attendance of children who may not be residents of Ohio, for whom the home shall or shall not pay tuition, as agreed upon. It also further provides that if tuition is agreed upon to be paid the home shall pay for pupils not residents of Ohio.

It is fair to say that these provisions for the payment of tuition of all pupils not residents of the school district in which the home is located imply that the legislature regards such children as temporarily at the home and not to be enumerated in that school district as provided in section 7794 G. C., quoted below. These provisions are in line with the requirements of the compulsory education law. These provisions also afford us an inference by which to judge and apply the legislative intent as found in H. B. 615—the new school revenue law.

Now, section 7787 G. C. as amended in H. B. 615 provides for a report of the board of education of each district to the county auditor in which are many items not found therein before such amendment, new among which is "the aggregate days of attendance of pupils." This phrase follows the item "average daily attendance" which from long usage has a customary meaning; viz.: the quotient obtained by dividing the total days of attendance of pupils by the total number of days the school was in session. So, undoubtedly, "aggregate days of attendance of pupils" means, following the rule of the statute hereinbefore stated, the product found by multiplying the average daily attendance by the number of days the school was in session.

A pupil is one who is present at a school for study and instruction directed by a teacher, that is, one enrolled in such school attending its daily sessions regularly or otherwise.

In the Standard dictionary "pupil" is defined thus:

"A person of either sex, or of any age, under the care of a teacher; scholar; disciple. In the United States 'pupil' is quite generally used to denote a scholar in an elementary or secondary school as distinguished from 'student,' a scholar in a higher institution.

The definition of "pupil" found in the Century dictionary is as follows:

"A youth or any person of either sex under the care of an instructor or teacher; in general a scholar, a disciple."

Section 7667 G. C. gives a board of education the right to admit adults over twenty one years of age to a high school and pupils from other districts upon such terms and under such rules as it adopts. Such pupils are as a habit or custom usually counted in determining the average daily attendance, so, under the rule hereinbefore quoted from H. B. 615, would be counted in the "aggregate attendance of pupils."

Similarly, inmates of children's homes or orphan asylums attending school would also be counted. All such persons come within the definition and meaning of the word "pupil" ordinarily used.

Section 7794 provides for the enumeration of all unmarried youth, noting sex, between six and twenty one years of age, *resident within the district*, and not *temporarily there*. Here the designation "youth" is to be noted in distinction to the term "pupil" used in the phrase "aggregate days of attendance of pupils." *Pupil* is broader in meaning than *youth* is intended to be as used for enumerating purposes and *pupil* is the word generally and consistently used in other sections throughout the school laws, it being constantly used in designating persons actually under the care and instruction of a teacher.

The care taken by the legislature in section 7677 and 7678 G. C. to have tuition of children in county and other homes paid by the *districts* of their *last residence*, whether from other districts in the county in which the home is located or from districts of other counties of the state, plainly indicates that such are *enumerated youth* of the district of *last residence* but pupils of the school of the district where they are being taught.

As has been before said herein, to thus provide for the schooling of the inmates of county and other children's homes the effectiveness of the compulsory education laws is secured although to count such children in the aggregate days of attendance affects to some extent the distribution of the funds apportioned by the auditor of the county in which these homes are located to the advantage of the district where such inmates are taught. However, the effect on the distribution of funds is slight. To distribute funds on the "aggregate days of attendance of pupils" places a reward, so to speak, on regular attendance at every school by thus crediting to the district having the most regular attendance the maximum amount of the funds so distributed according to section 7600 G. C.

Therefore, your first question must be answered in the affirmative. It is the opinion of this department that pupils in a school coming from a county, semi-public or district children's home are to be counted in the "aggregate days of attendance of pupils" in the schools of the district in which such home is located. Also your second question, for the same reasons, must be affirmatively answered. Although residents of another state attending Ohio schools are not enumerated *youth* yet they are pupils of the schools attended under the ordinary meaning of that term as used in the law.

Respectfully,

JOHN G. PRICE,
Attorney General.

1403.

MUNICIPAL COURT OF PORTSMOUTH—SECTION 1579 463 G. C. (108 O. L. 462) DOES NOT FIX COSTS IN CRIMINAL CASES—BY REFERENCE, COSTS SAME AS ALLOWED TO MAYORS AND JUSTICES OF PEACE IN SUCH CASES.

Section 5 of house bill 320 (Portsmouth Municipal Court Act, 1579-463, (108 O.L., 462) relating to the jurisdiction of such court, does not fix the costs in criminal cases. Such costs by reference are the same as the costs heretofore allowed in such cases to mayors and justices of the peace.

COLUMBUS, OHIO, July 3, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows: