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1. CHILD, MINOR—LEGAL SCHOOL RESIDENT—CLEVELAND CITY SCHOOL DISTRICT—COMMITTED BY JUVENILE COURT OF CUYAHOGA COUNTY TO CUSTODY OF CUYAHOGA COUNTY CHILD WELFARE BOARD—PLACED IN LICENSED BOARDING HOME—SCHOOL DISTRICT NOT CLEVELAND CITY SCHOOL DISTRICT—BOARD OF EDUCATION, CLEVELAND CITY SCHOOL DISTRICT OBLIGATED TO BEAR EXPENSE, CHILD'S EDUCATION, IF CHILD ATTENDS PUBLIC SCHOOL.
2. CUYAHOGA COUNTY CHILD WELFARE BOARD—CUSTODIAN, MINOR CHILD—DUTY TO SEND CHILD TO PUBLIC, PRIVATE OR PAROCHIAL SCHOOL—EXCEPTIONS.
3. "FOSTER HOME"—FAMILY HOME WHERE CHILD REARED AS OWN CHILD—RELATIONSHIP EXISTING BETWEEN FAMILY AND CHILD OR CHILDREN, PROPERLY DESCRIBED AS IN LOCO PARENTIS.
4. "BOARDING HOME"—PRIVATE HOME OTHER THAN FOSTER HOME OR BOARDING HOUSE—CHILDREN PLACED FOR CARE AND TREATMENT—BOARD PAID TO KEEPERS OF SUCH HOME.

SYLLABUS:

1. When a minor child, who is a legal school resident in the Cleveland City School District is committed by the Juvenile Court of Cuyahoga County to the custody of the Cuyahoga County Child Welfare Board for temporary care and the child is placed by the Welfare Board in a licensed boarding home located in a school district other than the Cleveland City School District, it becomes the obligation of the Board of Education of the Cleveland City School District to bear the expense of the education of the child in the school district in which he has been so placed, if the child attends a public school.

2. When the Cuyahoga County Child Welfare Board becomes the custodian of a minor child of school age, and places that child in a home or boarding house located in a school district other than the district in which the child was a school resident at the time of placement, it becomes the duty of the persons directly in charge of the child in said home to send such child to a public, private or parochial school for the full time the school attended is in session, unless the child is employed on an age and schooling certificate or has been determined in the manner provided by law to be incapable of profiting substantially by further instruction, and if the child under such circumstances is sent to a public school in the school district where the home or boarding house is located, it is the duty of the school authorities in such district to admit the child to school.

3. A "foster home", as the term is used in the law of Ohio means a family home where the persons maintaining the home rear a child or children of another as their own child or children, and thereby the relationship existing between such persons and the child or children who are being reared, is properly described as being in loco parentis.

4. A "boarding home" as the term is understood and used by public welfare administrators in connection with the placement of minor children in such homes by said administrators is a private home other than a foster home; or a boarding house, in which such children are placed for care and treatment and where board is paid to the keepers of such home or boarding house for the maintenance of the said children in such home.

Columbus, Ohio, October 16, 1943.

Hon. Herbert R. Mooney, Director, Department of Public Welfare,
Columbus, Ohio.

Dear Sir :

I am in receipt of your request for my opinion which reads as follows :

"Since Opinion 3353 was rendered on January 21, 1941, by the Attorney General of Ohio, there has arisen considerable confusion as to the status of children who are residents of Cleveland and have been temporarily committed to the care and custody of the Cuyahoga County Child Welfare Board and placed by that board in boarding homes located in school districts other than the Cleveland School District. The Cleveland Board of Education has refused to pay tuition in these cases and because of their refusal certain communities in Ohio have either excluded the children from school or have refused to permit them to enter school.

To clear up this situation, as well as other situations of a similar type, we herewith submit the following questions :

(1) T. N., a minor, and a legal resident of Cleveland, Ohio, was committed by the Cuyahoga County Juvenile Court to the Cuyahoga County Child Welfare Board for temporary care. Legal custody of the child is held by the Cuyahoga County Child Welfare Board. The child is then placed by said Board in a licensed boarding home in the Leavittsburg School District, in Trumbull County. The child's support is furnished by the Cuyahoga County Child Welfare Board, the board money being paid by said Board to the boarding parents who are boarding the child.

QUERY: Is the Cleveland, Ohio, Board of Education obligated to pay tuition to the Leavittsburg District School for this child?

(2) The child having been placed in this duly licensed boarding home, can the Leavittsburg School District refuse ad-

mittance to the child simply because the Cleveland Board of Education refuses to pay tuition?

(3) What do the terms 'foster home' and 'boarding home' connote as said terms have been used in previous opinions of the Attorney General?

We would appreciate having an opinion on these three questions in the near future."

Juvenile courts which exist and function by authority of and in pursuance of Sections 1639-1 to 1639-60 of the General Code of Ohio and including the Juvenile Court of Cuyahoga County, Ohio, for which certain special provisions are made in pursuance of Section 1683-12 to Section 1683-33, inclusive, of the General Code of Ohio, are vested with broad powers with respect to the control and care of such delinquent, neglected, dependent or crippled children as may come under their jurisdiction. When any such child by reason of formal complaint having been filed or otherwise, comes under the jurisdiction of the Juvenile Court it becomes the court's duty to make such investigation as may be necessary and conduct such hearing, which may be informal, as may be proper to determine what disposition should be made of the child and what steps should be taken for the future care and welfare of the child as would be proper and for the best interests of the child and society.

It is provided in Section 1639-30, General Code, that if the court (upon hearing) shall find that a child is delinquent, neglected, dependent or otherwise within the provisions of the Juvenile Court Act, the court may by order duly entered proceed as follows:

"1. Place the child on probation or under supervision in its own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;

2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare and authorized to care for children or to place them in suitable family homes;

3. If, in his judgment, it is for the best interests of a delinquent child, the judge may impose a fine upon such child not exceeding \$25.00 or costs, or both, and if such child is over fourteen years of age, he may order such child to stand committed until such fine and costs are paid.

4. Make such further disposition as the court may deem to

be for the best interests of the child, except as herein otherwise provided.

5. In case of a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory."

In Section 1639-34, General Code, it is provided:

"When a child has been committed as provided by this chapter, the court may make an examination regarding the income of the parents or guardian or person charged with its support, and may then order that such parent or guardian or person pay for the care, maintenance, and education of such child, and for expenses involved in providing orthopedic, medical or surgical treatment or special care of such child. The court shall have power to enter up judgment for the money due and to enforce such judgment by execution. Provided, however, that whenever a child which has a legal settlement in another county comes within the jurisdiction of the court, the court may certify such case to the court of the county of legal settlement exercising the powers and jurisdiction conferred in this chapter for further proceedings, and such court shall thereafter proceed as if the original complaint had been filed in said court.

Any expense incurred for the care, support, maintenance, education or medical or surgical treatment or special care of a child, which has a legal settlement in another county, shall be at the expense of the county of legal settlement, if the consent of the judge of the court exercising the powers and jurisdiction conferred in this chapter, of the county of legal settlement is first obtained. When such consent is obtained, the county commissioners of the county in which such child has a legal settlement, shall reimburse the committing court for such expense, out of its county general fund.

Any dependent or neglected child which has a legal settlement in a foreign state may be committed to the state department of public welfare, division of charities, for return to the state of legal settlement.

Any expense created by the court for the care, maintenance and education of dependent, neglected or delinquent children, or for orthopedic, medical or surgical treatment or special care of such children under the provisions of this chapter, except such part thereof as may be paid by the state or federal government, shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge of the court."

Section 1639-57, General Code, reads as follows:

“It is hereby made the duty of the county commissioners to appropriate such sum of money each year as will meet all the administrative expense of the court exercising the powers and jurisdiction conferred in this chapter, including reasonable expenses of the judge and probation officers in attending conferences at which juvenile or welfare problems are discussed, and such sum each year as will provide for the care, maintenance, education and support of neglected, dependent and delinquent children, other than children entitled to aid under the aid to dependent children law, section 1359-31 et seq., G. C., and for necessary orthopedic, surgical and medical treatment, and special care as may be authorized by such court, for any neglected, dependent or delinquent children, as herein provided. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge of the court.”

I have no doubt but that the Juvenile Court in all cases referred to in your inquiry might have committed the child in question directly to the boarding homes mentioned at the time of their commitment and included within the terms of such commitments that the children so committed were to be educated at the expense of the court or of the parents or guardians in so far as they might have been found to be able to bear such expense, or that such expenses should be borne by the Welfare Board, which, in the last analysis, would amount to the same thing as the court assuming on its behalf the burden of this expense. It does not appear, at least with respect to the concrete case which you submit, that this was done. So far as appears, the commitment of the boy in question, and perhaps all the others spoken of, was direct to the Cuyahoga County Child Welfare Board. No mention is made of any special orders regarding what the Welfare Board was directed to do or what liabilities should be incurred by it on behalf of children so committed to it or what limitations exist as to its powers and authority other than that the commitment by its express terms is for temporary care only.

For many years, asylums known as children's homes have been provided in counties or in several counties acting jointly, and known as district children's homes, in this and other states, for the care and treatment of children within certain age limits who have become orphaned or who have been abandoned or neglected by their parents or legal guardians. Under the laws relating to the establishment and maintenance of such children's homes the management of the home is reposed in a board of trustees which is empowered to appoint a superintendent of the home and otherwise control and manage the affairs of the home.

By virtue of Section 3108-1 and Section 14654, General Code, county

commissioners are authorized to lend financial assistance to incorporated societies whose object is the care, aid and education of neglected or destitute children. Express provision is made for such aid by Section 3108-I, General Code, in counties in which a county children's home has not been established. It is provided by Section 3108-2, General Code, that children's homes or societies so assisted by county commissioners shall be known as semi-public homes, and that such semi-public homes shall have the same rights and duties as are prescribed in the case of county children's homes by Sections 3089, 3090, 3091, 3093, 3095, 3096, 3097, 3098, 3099, 3100 and 3103 of the General Code of Ohio. See also Ohio Jurisprudence, Volume 21, page 281, Section 55.

Provision is also made by Sections 3092 and 3092-1, General Code, to the effect that in counties that have not provided children's homes, or when it becomes desirable to abandon the use of such homes then in existence, a county child welfare board may be created in such counties with similar powers and duties to those formerly held and exercised by the trustees of the former children's home, when such trustees had formerly acted.

Pertinent statutory provisions relating to the administration and care of children in children's homes and by county child welfare boards are contained in Section 3089 and cognate sections of the General Code, which read in part, as follows:

Section 3089:

"The board of trustees of the home shall receive for care and treatment children under the age of eighteen years, who have resided in the county not less than one year, and such other children under such age from other counties in the state where there is no home, as the trustees of such home and the persons or authority having the custody and control of such children, by contract agreed upon, who are, in the opinion of the trustees, suitable children for acceptance by reason of orphanage, abandonment or neglect by parents, or inability of parents to provide for them; provided that the juvenile court of the county may at any time commit a child to the board of trustees when in the opinion of the judge it should be so committed. The board of trustees may contract with persons, hospitals and other agencies for care and treatment of such children as need special care outside of the home or within the home if facilities have been provided for such care and treatment. Closely supervised boarding homes shall be used for children who are not suitable for care in the children's home because of behavior, or mental or physical condition, and such children shall not be accepted under permanent surrender or by permanent commitment by the juvenile court. If a ward of such home is found to be incorrigible or can

be better cared for elsewhere, he or she may be brought before the juvenile court for further disposition. Parents or guardians of such children shall in all cases where able to do so, pay reasonable board for their children received by such children's home. The above duties and functions shall apply to a county child welfare board established under the provisions of G. C. Sec. 3092."

Section 3090 :

"They shall be admitted by the superintendent on the order of the juvenile court or of a majority of such trustees, accompanied by a statement of facts signed by the court or trustees, setting forth the name, age, birthplace, and present condition of the child named in such order, which statement of facts contained in the order, together with any additional facts connected with the history and condition of such children shall be, by the superintendent, recorded in a record provided for that purpose, which shall be confidential and only open for inspection at the discretion of the trustees."

Section 3092 :

"In any county where such home has not already been provided the board of county commissioners may enter into a contract for the care of its neglected or dependent children with a county children's home in another county, or with any institution or association in the state which has for one of its objects the care of dependent or neglected children, provided such institution or association has been duly certified by the division of charities, department of public welfare; or the board of county commissioners may pay reasonable board and provide suitable clothing and personal necessities as well as medical, dental and optical examination and treatment of dependent or neglected children who may be placed in the care of private families within the county. Provided that in each case such dependent or neglected children shall be duly committed to the aforesaid institution or association or placed in the care of a private family by the juvenile court as provided by law; or with the approval of the division of charities, department of public welfare, when in the judgment of the county commissioners the best interests of the dependent and neglected wards of the county will be subserved thereby, they may appoint a county child welfare board of five members to serve without compensation, such appointments to be subject, as far as applicable, to the provisions of sections 3081 and 3082 of the General Code. Such board shall have the same powers and duties relative to dependent and neglected children as are now given to trustees of county children's homes, so far as applicable, particularly relating to the appointment of visitors for the finding and supervision of family homes for such children. Such a county child welfare board shall appoint a suitable person to serve as executive officer of the work under its supervision and

upon such terms of remuneration as available funds will warrant.”

Section 3092-1 :

“In any county having a county children’s home the board of county commissioners, with the approval of the division of charities, department of public welfare, may abandon the use of such home and proceed with the sale or lease of the site and buildings in the manner most advantageous to the county, or may proceed to use them for other necessary and proper purposes. Upon the abandonment of such site and buildings for a children’s home the former board of trustees of the home shall be continued and be designated as a county child welfare board as defined in section 3092 of the General Code. If all or a part of the site and buildings heretofore used for such county children’s home be sold or leased the net proceeds of such sale or lease shall be paid into the county treasury and the county auditor shall credit such proceeds to the funds for the child welfare board to provide and care for neglected and dependent children in other institutions, boarding homes, or otherwise as may seem proper by such board. The child welfare board may sell any furnishings or equipment remaining in the buildings and shall pay the receipts therefor into the county treasury and the county auditor shall credit such receipts to the funds for such board.”

Section 3093, General Code, provides in part, as follows :

“All wards of a county or district children’s home, or of any other accredited institution or agency caring for dependent children who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the permanent care of such home, or who have been by the parent or guardian voluntarily surrendered to such an institution or agency, shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age. The board of trustees may by contract or otherwise provide suitable accommodations outside of the home and may provide for the care of any child under its control by payment of a suitable amount of board, to a competent person, whenever the interests of such child require such an arrangement. Children committed for temporary care or received by arrangement with parent or guardian shall be considered under the custody and control of the trustees only during the period of such temporary care, except as hereinafter provided. * * *

Sections 3095 and 3096, General Code, provide as follows :

Section 3095 :

“The trustees shall seek homes in private families for all

children eligible to be placed out, but before allowing a child to leave the home they shall cause the proposed foster home to be carefully investigated and satisfy themselves that such persons are suitable to have the care and bringing up of the child. The trustees shall have scrupulous regard to the religious and moral character of the persons with whom the child is placed in order to secure to it the benefit of good example and wholesome instruction and opportunity of becoming an intelligent and useful citizen."

Section 3096:

"The trustees shall require an agreement in a form to be prescribed by the board of state charities, in writing to be entered into, that such child so placed out shall be furnished with good and sufficient food, clothing and a public school education, and if deemed by the trustees to the interest of the child that such provisions be made, that there shall be payment to it of a reasonable amount to be named in the agreement, to be paid in such amounts and times as may be specified. Children may be placed in homes on trial without any written agreement. For the purpose of securing the well being and progress of such children, and the enforcement of the agreement, the trustees shall have the control and guardianship of such children until they become of age."

From the terms of the statutes quoted above, it seems clear that when a county children's home has not been established or where one had been established and it becomes desirable to discontinue it and establish a county child welfare board in its stead, the powers and duties formerly held and exercised by the trustees of the children's home which may be abandoned or would have been held and exercised by a county children's home if such home had formerly been in existence, with respect to child welfare work in such institution, become the functions and obligations so far as applicable, of the county child welfare board so created. In Section 4838-3, General Code, as enacted in House Bill No. 217 of the 95th General Assembly, it is provided in almost identical language to that of former Section 7676, General Code, which was then repealed, as follows:

"The inmates of a county, semi-public or district children's home shall have advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. 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 of the district in which such home is located. Such board of education shall employ, with the approval of the superintendent of the home, necessary teachers, and provide books and educational equipment and supplies, and conduct such school

in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light."

In Section 4838-2, General Code, as enacted in House Bill No. 217, it is provided inter alia :

"Inmates of the proper age of county, semi-public and district children's homes shall be admitted after the manner described in Section 4838-3 of the General Code."

And again,

"A child who is an inmate of a county, semi-public or district children's home and who at the time of placement in such 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 provisions of Section 4838-2, General Code, quoted above, are substantially the same as similar provisions relating to the same subject formerly embodied in Section 7678, General Code, which was repealed upon the enactment of said House Bill No. 217.

Children committed to, or placed with a county child welfare board, bear the same relation to the welfare board as do inmates of a children's home to such an institution, and, in a sense, are inmates of the board. A county children's home is a county institution; the inmates are wards of the county. See Annual Report of the Attorney General for 1912, page 1476, at page 1481. That is equally true with respect to children who have been committed to a county welfare board. However, a welfare board does not in a physical sense, have a home or building in which such children may be housed and cared for, and can not be said to have a situs or locale in any one particular school district in the county in which the welfare board functions as does a public, semi-public or district children's home. That situs or locale is in whatever school district the welfare board may place the children which have been committed to it. All such children must of necessity be cared for, fed, clothed and housed either in foster or family homes or in boarding houses. So long as such children are inmates of a county, semi-public or district children's home or are wards in the custody of a child welfare board, their education in the public schools is to be paid for in the manner prescribed in Sections 4838-2 and 4838-3, of the General Code of Ohio, unless special orders therefor are made by the Juvenile Court in its original commitment of the children or the children

are later placed in a foster home, which is not the case in the concrete case submitted in your inquiry as the commitment by its express terms is limited to temporary care of the child and does not make special provision for the education of the child in a manner other than that provided by law.

Moreover, by the express terms of the arrangement whereby the child spoken of in your inquiry has been placed in the Leavittsburg District, and I gather that the concrete case mentioned is illustrative of similar cases, the child is placed in a duly licensed boarding home and that the child's board is paid by the child welfare board to the boarding parents of the child, which fact in and of itself does not carry with it an implication or an understanding that the child has been placed out by the board in a family home such as is spoken of in Sections 3095 and 3096, of the General Code, as a foster home where a child so placed out is by the express terms of the statute a home where a child is "to be furnished with good and sufficient food, clothing, and a public school education." The furnishing of good and sufficient food, clothing, and a public school education by a family maintaining a foster home is inconsistent with the idea of collecting or receiving board by persons running a boarding house. It will be granted that the statute provides in Section 3096, General Code, that when a child is placed in a foster home and an arrangement is made with the foster home, as prescribed by said Section 3096, the trustees or agency so placing the child are authorized, when it is deemed to be to the interests of the child that such a provision be made, to pay to it a reasonable amount, to be named in the agreement. That is not to be paid as board, however, as the law expressly provides that the agreement which it is directed shall be entered into shall provide that under such circumstances the child shall be furnished with good and sufficient food, clothing and a public school education by the persons conducting the foster home.

I come now to a consideration of your second question as to the duty of persons having the custody and care of children who have been placed with them in a so-called boarding home, to send such children to school, and the duty of the school authorities in the school district wherein the boarding home is located to admit them even though the board of education of the school district of last residence of such pupils before placement in the boarding home refuses to pay or acknowledge liability for the expense of the education of the child in the school district where the boarding home is located.

This question is answered, I believe, by Section 4838-3, General Code (formerly Section 7676 G. C.) wherein it is provided that:

"The members of a county, semi-public or district children's home shall have the advantage of the privileges of the public

schools. So far as possible such children shall attend such school or schools in the district within which such home is located."

Under the laws relating to compulsory education, Section 4849, General Code et seq., as enacted in House Bill No. 217 of the 95th General Assembly, children between the ages of six and eighteen years of age are said to be of compulsory school age and it is provided in Section 4849, General Code, that:

"The parents, guardians or other persons who have the care of a child of compulsory school age shall instruct him, or cause him to be instructed as herein provided, unless he is employed on an age and schooling certificate, or shall have been determined, as provided by law, to be mentally incapable of profiting substantially by further instruction."

The provisions of Section 4849, General Code, quoted above are substantially the same as those of former Section 7762, General Code, now repealed.

A former Attorney General in an opinion published in Opinions of the Attorney General for 1929, page 195, said with reference to this subject on page 199:

"In any event all children within the compulsory school age, and not employed on an age or schooling certificate, residing in, or in charge of a resident of a school district, whether that charge comes about by reason of legal adoption or by reason of commitment or permission of any person or authority authorized to make such commitment or grant such permission, such as the trustees of a county, semi-public or district children's home, or whether or not the home in which the child resides has the characteristics of a foster home or boarding home, may attend the school in the district where they reside or where the person in whose charge they are, resides, excepting children in a private children's home. The person so in charge of them must send them to a public, private or parochial school as provided by the compulsory school laws of Ohio, Sections 7762 et seq., General Code.

The person having the care of a child of compulsory school age who fails to send such child to school in compliance with the compulsory school laws of Ohio, may be prosecuted for such failure under Section 12974, General Code. Section 7770, General Code, provides that the attendance officer or his assistant, may take into custody any youth of compulsory school age who is required by law to attend school and shall conduct such youth to the school he has been attending, or should rightfully attend.

* * *

if it is the duty of persons having the care and charge of children to send them to the public school of the district in which such child is found, and it is the duty of the attendance officer to conduct them to the school, it follows that it is the duty of the school board to admit such children.

A board of education can not refuse to permit the children in the district to attend the schools of the district, even though there may be some question as to their right to attend the school free of charge. The children have a right to attend the school if they are in care of, or in charge of a resident of the district, with the exception of children in a private children's home. If any person or any school district is liable for the child's tuition, the board of education in the district where it attends school may enforce that liability by an action at law, but cannot refuse the privilege of the schools of the district to such child even though there is such a liability for tuition and it is not paid. The fact that school authorities may get into a controversy as to whether or not tuition should be paid for a child must not stand in the way of the child's right to attend school."

Upon the enactment of House Bill No. 217 of the 95th General Assembly, Section 7762 et seq., General Code, were incorporated in substance in Sections 4849 to 4849-12, inclusive, of the General Code. Former Section 7770, General Code, became in identical terms Section 4852-3, General Code, upon the enactment of said House Bill No. 217.

I do not find that the terms "foster home" and "boarding home" as such, had been considered in previous opinions of the Attorney General prior to the 1929 opinion referred to. Opinions of the Attorney General for 1929, page 195. Since that time a number of references have been made thereto in opinions which were quite thoroughly reviewed in the 1941 opinion mentioned in your inquiry. See Opinions of the Attorney General for 1941, page 1. It is pointed out therein that the question of just when a home is a boarding home or a foster home, is not without difficulty. It at all times is a question of fact, whether it arises by reason of commitments to public institution or agencies and placements made by such institutions or agencies or whether it grows out of the placement of children by private individuals with relatives or friends and laws relating to or involving such questions are not entirely clear. The first time the term, "foster home" appeared in the law of Ohio in connection with the placement of children by the trustees of children's homes was in 1908 (99 O. L. 188). The law did not at that time or since, afford an entirely satisfactory definition of the term nor did it contain provisions whereby an entirely satisfactory comparison might be made of so-called boarding homes as the term is used by public administrators and foster homes. This is due, to some extent at least, to the fact that what have come to be

termed boarding homes for children in public institutions such as public children's homes, welfare boards, the board of state charities and the Department of Public Welfare, Division of Charities, which later became authorized to receive children for public care, were not then known. Until comparatively recent times, somewhat later than 1908, all children who became public charges were either housed and cared for in public or semi-public children's homes, and if they were placed out as spoken of in present Section 3095, General Code, and in Section 933, Revised Statutes as enacted in 1908, they were considered as being so placed out either by way of indenture or adoption or in homes where they became one of the family and were cared for, fed, clothed and educated as such in a home where the persons in charge of the home and the child bore the relation of loco parentis to the child.

Later, the care of children who were inmates of children's homes because of congested conditions in the home, were placed outside the home under circumstances that did not comport entirely with the idea of the children becoming foster children, as the term had been generally understood, and this became particularly true when the children had been originally confided to the care and custody of welfare agencies such as county welfare boards and the state board of charities and later the Department of Public Welfare, Division of Charities. These welfare agencies did not, and do not have buildings in which the children may be cared for, and it is necessary that they be placed with private individuals, or what may be termed "boarding homes." It frequently is not practicable or possible to find private families that can or will assume the care of the children that is necessary to constitute the private home a foster home in the sense contemplated by law. To constitute such a home a foster home it is necessary that the foster home assume the same responsibilities that such foster parents would be charged with for one of their own natural children. Thereupon, there came into existence as a matter of convenience and, to some extent, necessity, what came to be termed "boarding homes" by public welfare administrators. The use of boarding homes as such, has some sanction in Section 3092-1, *supra*, but should not be confused with the term as used in Section 3089, General Code, which refers to boarding homes as those which may be used for children not suitable for care in a children's home because of behavior or mental or physical conditions.

Since 1929, several opinions of former Attorneys General have been rendered which to some extent at least, clarify some of the questions that arise in connection with children who are public charges. These several opinions were reviewed quite extensively in my opinion No. 3353 mentioned by you in your inquiry. See Opinions of the Attorney General for 1941, page 1.

In this connection, it should be noted that the question involved in the 1941 opinion was quite different from that raised by your first question in the present inquiry. The question involved in the 1941 opinion made no reference whatever to a county children's welfare board. The commitment made by the Juvenile Court which was involved and considered in the 1941 opinion was by the express terms of the commitment to the foster homes of residents of Washington Township, Lucas County. Here the commitment of the Juvenile Court was not to a foster home or to an individual resident or home in Cuyahoga County or elsewhere. The commitment here involved, as outlined in your first question and presumably in "other situations of similar type" was to the Cuyahoga County Child Welfare Board for temporary care, which board in terms either by order of the Juvenile Court or probably with the tacit consent and approval of the Juvenile Court, placed the children which had been so committed by the Juvenile Court to the county welfare board in a licensed boarding home, not a foster home, located in Leavittsburg, Ohio—a different school district than the one in which the children had resided prior to their placement. The situations are quite different, and involve quite different principles in the determination of the status of the child involved so far as the liability for the expense of his education in the public schools is concerned.

In specific answer to the questions submitted I am of the opinion that:

1. When a minor child, who is a legal school resident in the Cleveland City School District is committed by the Juvenile Court of Cuyahoga County to the custody of the Cuyahoga County Child Welfare Board for temporary care and the child is placed by the Welfare Board in a licensed boarding home located in a school district other than the Cleveland City School District, it becomes the obligation of the Board of Education of the Cleveland City School District to bear the expense of the education of the child in the school district in which he has been so placed, if the child attends a public school.

2. When the Cuyahoga County Child Welfare Board becomes the custodian of a minor child of school age, and places that child in a home or boarding house located in a school district other than the district in which the child was a school resident at the time of placement, it becomes the duty of the persons directly in charge of the child in said home to send such child to a public, private or parochial school for the full time the school attended is in session, unless the child is employed on an age and schooling certificate or has been determined in the manner provided by law to be incapable of profiting substantially by further instruction, and if the child under such circumstances is sent to a public school in the school district where the home or boarding house is located, it is the duty of the school authorities in such district to admit the child to school.

3. A "foster home" as the term is used in the law of Ohio, means a family home where the persons maintaining the home rear a child or children of another as their own child or children, and thereby the relationship existing between such persons and the child or children who are being reared is properly described as being in loco parentis.

4. A "boarding home" as the term is understood and used by public welfare administrators in connection with the placement of minor children in such homes by said administrators is a private home other than a foster home; or a boarding house, in which such children are placed for care and treatment and where board is paid to the keepers of such home or boarding house for the maintenance of the said children in such home.

Respectfully,

THOMAS J. HERBERT,
Attorney General.