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SYLLABUS:

1. When a child resides in a semi-public children's home located in one school district, and when the child, prior to being admitted to said institution, was the "ward" of an "actual resident" of another school district, this latter school district, in accordance with Section 3313.64, Revised Code, is financially responsible for the education of the child while he is an inmate of the semi-public children's home.

2. A child is a "ward" for the purposes of Section 3313.64, Revised Code, only if the facts warrant the conclusion that an "actual resident" of a school district stands in *loco parentis* to the child.

Columbus, Ohio, September 27, 1963

Hon. Earl W. Allison
Prosecuting Attorney
Franklin County
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This office has been requested to rule as to the legal responsibility for the payment of tuition for five children presently residing in the Methodist Children's Home and attending the Worthington Local Schools which are located in the district of said Home.

"Both of the parents of these children died the early part of February 1962, at which time all five children were attending school at Rinard Mills. After the death of the parents all five children went to a relative's home located in Groveport, Ohio, but did not attend school in this district. Within three weeks the children were placed among various relatives as follows:

"Child No. 1—*Sherry*, with Mrs. Harris, Rager Rd., attended Groveport High School 3-6-62 to 5-29-62

"Child No. 2—*Deborah*, with Mrs. Velma Osbourn, attended *DUVALL* but records are Ashville Elementary, Teays Valley Consolidated School District April 1962 to 5-29-62

"Child No. 3—*Marsha*, with Mrs. Don Hinton, Richard Ave., Grove City, Southwestern School District from March 1962 to June 1962

"Child No. 4—*Richard*, lived with Mrs. Tope, Obetz School, Hamilton Local School District, 1st Grade, entered 4-5-62 left 5-25-62

"Child No. 5—*Althea*, lived with Mrs. Tope, Obetz School, Hamilton Local School District, 4th Grade entered 4-5-62 left 5-25-62

"On June 18, 1962, one of the relatives was appointed legal guardian of all the children by the Franklin County Juvenile Court.

"Child No. 1 was admitted to the Methodist Children's Home on June 16, 1962, and attended the Worthington Schools until January 2, 1963, at which time the child was placed by the guardian in the home of an aunt who lives in Florida.

"Child No. 2 was admitted to the Methodist Children's Home on June 20, 1962, attended the Worthington Local Schools until January 2, 1963, and was also placed by the guardian in the home of the aunt who lives in Florida.

"Child No. 3 and No. 5 were accepted by the Methodist Children's Home on June 20, 1962, but due to lack of space in said home, visited the aunt in Florida for a vacation and were admitted to the Methodist Children's Home on August 20, 1962, and are presently attending the Worthington Local Schools.

"Child No. 4 was admitted to the Methodist Children's Home on June 20, 1962, and is presently attending the Worthington Local Schools.

"On the basis of the above factual situation, we respectfully request your opinion as to which school district is liable for the payment of tuition for the education of the above children."

The initial question to be resolved is whether the Worthington Methodist Children's Home is a semi-public institution within the purview of Sections 3313.64 and 3313.65, Revised Code.

From the available facts, the Worthington Methodist Children's Home has been certified by the Department of Public Wel-

hand, there can be no doubt that inmates of the Worthington Methodist Children's Home are entitled to attend school in the Worthington school district. There is a problem, however, as to whom shall bear the financial responsibility of educating these inmates. The authority for assigning the financial responsibility for educating inmates of a county, semi-public, or district children's home is found in Section 3313.64, *supra*, which provides, in part, that:

"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, but the time in the school year at which beginners may enter upon the first year's work of the elementary school shall be subject to the rules and regulations of the board of education. 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. * * *

"* * * 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. * * *"

From the above statutory provisions, it is clear that the burden of expense for educating these children will fall upon the school districts in which the children established school residence prior to being admitted to the Worthington Methodist Children's Home. The key to such a determination will, therefore, depend upon where the children established "school residence" before being admitted to the children's home. According to Section 3313.64, *supra*, "School residents shall be all youth who are children or wards of actual residents of the school district." None of the five children in question can qualify as "children of actual residents." It is necessary, therefore, to resolve whether such children, were, at the time of placement in the home, "wards of actual residents" of a school district.

Shortly after the death of their parents in early 1962 and just prior to their admittance into the Worthington Methodist Children's Home, each of the five surviving children was placed with

various relatives who resided in different school districts. None of these relatives, however, resided in the Worthington school district. Because of this, it was impossible for any of these children to be "school residents" of the Worthington school district. In accordance with Section 3313.64, *supra*, therefore, the Worthington school district is not required to bear the expense of educating any of the five children in question. The problem then, is determining who must bear this financial burden.

There have been several opinions rendered by a number of Attorneys General on the construction of the term "ward," in relation to school matters. Most have refused to construe the term "ward," in a narrow or technical sense and prefer to construe it liberally. In Opinion No. 106, Opinions of the Attorney General for 1927, page 160, it was held in the first paragraph of the syllabus that:

"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."

In Opinion No. 1140, Opinions of the Attorney General for 1918, page 545, it was concluded in the second paragraph of the syllabus that:

"The term 'ward' should be liberally construed when used in relation to the education of the youth of school age of this state."

In accord with the foregoing, it has been held that the term "ward", as used in Section 3313.64, *supra*, should be liberally construed so as to permit a child to receive a free public education in the district in which he resides if persons with whom he resides stand in *loco parentis* to him. In Opinion No. 4864, Opinions of the Attorney General for 1932, page 1472, the following was stated in the second paragraph of the syllabus:

"By force of Section 7681, General Code, a child who resides with persons other than his parents or guardian under conditions whereby the person with whom he resides stands in *loco parentis* to him, may attend school in the district where those persons are 'actual residents', free of charge. Whether or not the child's residence is of the nature described above, is in all cases a question of fact

to be determined from all the pertinent facts and circumstances surrounding the situation.”

In matters relating to education, a child is a “ward” of an “actual resident” of the school district if the actual resident stands in *loco parentis* or in place of the parent to the child. In regard to the situation at hand, the five children, shortly after the death of their parents, were placed with various relatives located in different school districts. While residing with these relatives, each child completed the remainder of the school year in the school district where the home in which he was residing was located. Because a legal guardian was not appointed for the children until some three months after they were placed in the relative’s homes, I am inclined to believe that during the time prior to such appointment, each relative had full control and custody over the child within its home. It appears, therefore, from the facts presented, that each relative stood in *loco parentis* to the child residing in its home from the time the child was placed there in March, 1962, to the time a legal guardian was appointed on June 18, 1962. If the preceding is true, then each of the children was a ward of an actual resident of the separate school districts of Madison Local, Teays Valley, Southwestern, and Hamilton Local.

In regard to the argument that the placement of these children in the homes of relatives was only a temporary expedient pending final placements in the Worthington Methodist Children’s Home, I refer you to *Sheard et. Neglected Children, In re 82 Ohio Law Abs.*, where it is said on page 261 that:

“It is apparent from these sections that for school attendance purposes a child becomes a resident in a school district as soon as he acquires any kind of home in that district, whether or not that particular home is permanent or temporary in nature.”

Inasmuch as it appears that each child had acquired some sort of home while residing with a relative, it is my opinion, based upon the foregoing, that the question of whether the home is permanent or temporary in nature is not important for the purposes with which we are concerned.

If, upon the facts presented, each of the five children was a “ward” of an “actual resident” of the above separate school dis-

tricts, then, these children, in accordance with Sections 3313.64, *supra*, were "school residents" of the said school districts at the time of admittance to the Worthington Methodist Children's Home and, therefore, these school districts are financially responsible for the education of each child from its district during the time in which that child is or was an inmate of the Worthington Methodist Children's Home.

It is therefore my opinion and you are accordingly advised that:

1. When a child resides in a semi-public children's home located in one school district, and when the child, prior to being admitted to said institution, was the "ward" of an "actual resident" of another school district, this latter school district, in accordance with Section 3313.64, Revised Code, is financially responsible for the education of the child while he is an inmate of the semi-public children's home.

2. A child is a "ward" for the purposes of Section 3313.64, Revised Code, only if the facts warrant the conclusion that an "actual resident" of a school district stands in *loco parentis* to the child.

Respectfully,
WILLIAM B. SAXBE
Attorney General