

Note from the Attorney General's Office:

1969 Op. Att'y Gen. No. 69-119 was overruled in part by
1980 Op. Att'y Gen. No. 80-095.

OPINION NO. 69-119

Syllabus:

When a child is an inmate of a private, county, semi-public or district children's home located in one school district, and when, prior to being admitted to said institution, he was a "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 in the public schools of the county in which the children's home is located.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: Paul W. Brown, Attorney General, September 22, 1969

I have before me your request for my opinion regarding the liability of a board of education for the payment of tuition for a pupil, without parents or legally appointed guardian, who was sent by his aunt and uncle to a school for the mentally disturbed in another county subsequently attending the public schools in that county.

The issue may be resolved by referring directly to the wording of Section 3313.64, Revised Code, which provides in pertinent part as follows:

"* * * The board may admit the inmates of a private children's home or institution located in the district, provided any child who is an inmate of such a home or institution and previous to admission was a school resident of the school district in which such home or institution 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 institution, a school resident of another school district of the state, tuition shall be paid by such school district in the manner provided for the payment of tuition by section 3317.08 of the Revised Code. * * *

"* * * * * * * * *

"* * * A child who is an inmate of a county, semipublic, 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 district of school residence shall pay tuition in such amount as shall be computed pursuant to the formula pro-

vided in section 3317.08 of the Revised Code, excepting that such formula shall be calculated as though the pupil were in attendance in the district of his school residence, and the tuition cost shall be computed by applying the factors in such formula to the district of school residence. * * *

(Emphasis added.)

The above section of the Revised Code clearly establishes the tuition liability of a board of education in the case where the student was a "school resident" of another school district prior to his admission to the children's home. It is likewise clear that tuition liability exists whether the child is an inmate of a county, a semi-public, a district or a private children's home. The tenor of your request, however, indicates a concern about the more pointed issue of the pupil's school residency in the situation where he has neither parents nor legal guardian.

This office has heretofore ruled that a child's school residency is that of the district in which the child was found, if the residency of the parents could not be determined. Opinion No. 2044, Opinions of the Attorney General for 1961. And, more precisely, the question of school residency may be answered by determining whether the person or persons with whom he resides stand in loco parentis to him. Opinion No. 4864, Opinions of the Attorney General for 1932. To this end my predecessor, in Opinion No. 545, Opinions of the Attorney General for 1963, ruled that for the purpose of Section 3313.64, Revised Code, such a child is a "ward" if the facts show that an "actual resident" of a school district stands in loco parentis to him.

And finally, Opinion No. 545, supra, while addressing itself solely to the instance where a child is an inmate of a semi-public children's home, is at least persuasive if not dispositive of the issue of tuition liability, whether the children's homes involved are privately endowed and administered or are county, semi-public, or district children's homes. Branch one of the syllabus provides as follows:

"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."

Therefore, it is my opinion and you are hereby advised that when a child is an inmate of a private, county, semi-public or district children's home located in one school district, and when, prior to being admitted to said institution, he 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 in the public schools of the county in which the children's home is located.