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1. FOSTER HOME — BOARDING HOME — FACTS AND CIRCUMSTANCES INCIDENT TO POSITION OF CHILD PLACED IN HOME OF PRIVATE FAMILY BY TRUSTEES OF COUNTY CHILDREN'S HOME DETERMINE TYPE OF HOME — SECTIONS 3089, 3093, 3095, 3096 G. C.
2. CHILD SHALL LIVE IN HOME AS MEMBER OF FAMILY — INDISPENSABLE ELEMENT NECESSARY IN FOSTER HOME.
3. WHERE HOME IS FOSTER HOME, FAILURE OF TRUSTEES OF COUNTY CHILDREN'S HOME TO SECURE FROM FOSTER PARENTS WRITTEN AGREEMENT TO PROVIDE FOSTER CHILD WITH FOOD, CLOTHING AND EDUCATION DOES NOT CHANGE CHARACTER OF HOME — SECTION 3096 G. C.

SYLLABUS:

1. The facts and circumstances incident to the position of a child placed in the home of a private family by the trustees of a county children's home, determine whether that home is a foster home or a boarding home within the meaning of those terms, as used in sections 3089, 3093, 3095 and 3096 of the General Code, and a mere declaration by the trustees of a county children's home that such a private home is a foster home, or is a boarding home, cannot change its actual status.

2. The one indispensable element which is necessary in a foster home is that the foster child live in the home as a member of the family.

3. The failure of the trustees of a county children's home to perform the duty enjoined upon them by section 3096 of the General Code (i. e. to secure a written agreement on forms prescribed by the Board of State Charities from the foster parents that they will provide the foster child with good and sufficient food, clothing and a public school education), will not change the character of a home which in fact is a foster home.

Columbus, Ohio, October 3, 1942.

Hon. William G. Wickens, Prosecuting Attorney,
Elyria, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"I hereby respectfully solicit your further opinion on the distinction between a 'boarding home' and a 'foster home' as the terms are used in Sections 3093, 3095 and 3096 of the General Code of Ohio. I have canvassed the following opinions dealing with this distinction:

1929 OAG Number 130

1931 OAG Number 3594

1933 OAG Number 2045

1941 OAG Number 3353

The present question concerns the payment of the expense for education by the school district of last residence prior to admission to the County Children's Home (G. C. Section 7678). In order that there may be a precise determination, I wish to submit the following inquiries:

(1) Does the power to declare a private home a 'boarding home' or 'foster home' for one of its wards rest solely in the trustees of the County Children's Home?

If the answer to question number (1) be in the affirmative, then the following need not be answered unless you deem them helpful to the Children's Home Trustees in guiding a correct determination of the nature of the home in which a child may have been placed.

(2) What is the minimum contribution of food, clothing and shelter by a private home to a child placed in said home by a County Children's Home necessary in order that said private home become a foster home?

(3) Can a private home in which a child has been placed by the County Children's Home, be a 'foster home' by reason of the facts concerning board, room and general maintenance, without formal declaration by the trustees of the County Children's Home?

(4) Can a private home in which a child has been placed by the County Children's Home, be a 'foster home' by reason of the facts concerning board, room and general maintenance in spite of a formal declaration by the trustees of a children's home that said place of residence is a 'boarding home'?

(5) What degree of permanency, if any, is indispensable to the existence of a 'foster home'?

(6) (a) Is an oral or written agreement with the foster parent a necessary factor to the establishment of a 'foster home'?

(b) If such agreement is requisite, what elements must be agreed upon?

(c) If such agreement is requisite, who must act on behalf of the children's home and how must such act be evidenced?"

Sections 3089, 3093, 3095 and 3096 of the General Code, which in so far as are pertinent herein, respectively read:

Section 3089.

" * * * 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. * * * "

Section 3093.

"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. * * * "

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."

A former Attorney General upon consideration of questions relating to your request, held:

" * * * A distinction is sometimes made between what has been called 'boarding homes' and 'foster homes.' This distinction has been pointed out in a former opinion of this office, and it has been generally held that where children are placed in what are strictly boarding homes in contradistinction to foster homes, the district in which the boarding home is located is entitled to collect tuition, if they attend school in that district. On the other hand, if the home in which they are living may be regarded as a foster home, they are entitled to attend the public schools in that district without the payment of tuition. See Opinions of the Attorney General for 1929, at Page 195 and for 1931 at Page 1177.

As cases arise between the two extremes, it is necessary to weigh all the circumstances and conditions surrounding the individual situation. Experience has shown that no set formulae can be made to fit all situations. It must at all times be borne in mind that the public school system is state-wide in its operation, that school districts exist for purposes of administration and that the educational needs and welfare of the child are of primary importance. It is the clear intent and purpose of the law that no child within the borders of the state, shall be deprived of an opportunity to go to school. Even with this guiding principle in mind and with all the facts and circumstances incident to particular cases known, questions of this kind are oftentimes very difficult to answer. In any event, the surrounding facts and circumstances of any particular case must be weighed, and it is necessary that this be done in the perspective of their local setting. It is difficult for this office to pass definitely on individual cases for the reason that it is difficult to bring to the attention of the Attorney General all the pertinent facts and circumstances so that he may consider them in their relation to each other and apply the law to those particular facts. The situation is considerably different than if the case were presented to a court where presumably all the facts and circumstances in the perspective of their local setting are before the court.

In the instant case, if the mother of these children has placed them in a private home for the purpose of having a home pro-

vided for them, not a mere boarding home, and in such a way that the persons with whom they are placed stand in loco parentis to the children, I am of the opinion that they may attend school in the district where this home is located, without the payment of tuition, even though the mother may pay for their board and care. If, however, the mother has placed these children in this home temporarily, and for the purpose of their attending school, and the persons in charge of the home are boarding and caring for the children with a view to profit, or if the home is conducted as a business enterprise, so that it may be classed as a boarding home, the mother would be required under the law to pay tuition, if they attend the schools of the district. * * *

See Opinions of the Attorney General, 1933, Page 1966.

A rather exhaustive discussion of the distinction between a "boarding home" and a "foster home" as those terms are used in the above quoted sections of the General Code appears in Opinion No. 3353, Opinions of the Attorney General for 1941. This opinion also cited, quoted and discussed the former opinions dealing with this subject, the consensus of the opinions being that no exact limits can be defined for these terms which will govern all cases. It is, therefore, necessary to resort to general legal principles which will determine each individual case.

The controlling principle involved in the questions which you raise is that a home in which the persons maintaining it rear a child or children of another as their own child or children, and who stand in loco parentis to such child or children is a foster home within the meaning of that term as used in the above quoted sections of the General Code. A home in which such relationship is absent is not a foster home as the term is used in those sections.

Loco parentis is defined in Bouvier's Law Dictionary, Rawles Third Revision, Vol. 2, P. 1522, as:

"In the place of a parent."

In Vol. 30, O.J., 550, it is stated:

"A person is said to stand in loco parentis to a child not his own, whom he has taken into his custody as a member of his family to rear as his own child."

As has been pointed out in several previous opinions of the Attorney

General, this relationship may exist even though the trustees of the County Children's Home, or the Ohio Department of Public Welfare is paying to the foster parents an amount for the maintenance of the foster child. See Opinions of the Attorney General, 1941, No. 3353, Opinions of the Attorney General, 1933, Vol. 33, No. 2045, P. 1960, and Opinions of the Attorney General, 1927, Vol. 1, No. 106, P. 160. Such payment is specifically authorized by Section 3096 of the General Code of Ohio, previously quoted.

In view of the foregoing discussion and in specific answer to your questions numbered 1, 3 and 4, it is my opinion that the facts and circumstances incident to the position of a child placed in the home of another, determine whether that home is a foster home, or a boarding home within the meaning of those terms as used in Sections 3089, 3093, 3095 and 3096 of the General Code of Ohio, and a mere declaration by the trustees of a county children's home that such a private home is a foster home, or is a boarding home, cannot change its actual status.

In answer to your questions numbered 2, 5 and 6, the one indispensable element which is necessary in a foster home is that the child live in the home as a member of the family.

The statutes do not establish any measure by which a minimum contribution of food, clothing and shelter, or a degree of permanency is to be determined for a foster home. In fact Section 3096 of the General Code provides that children may be placed in homes on trial. That section also provides that it is the duty of the trustees of a county children's home to secure an agreement from the foster parents in writing on forms prescribed by the Board of State Charities (now Department of Public Welfare) that the foster parents will provide such child with good and sufficient food, clothing and a public school education. However, the failure of the trustees to perform that duty (i.e. to secure such a written agreement) will not change the character of a home which is in fact a foster home.

Respectfully,

THOMAS J. HERBERT
Attorney General.