

occurring, respectively, in the even numbered years and in the odd numbered years. (See also the use of the term "general election" in G. C. 4967.)

Respectfully,
EDWARD C. TURNER,
Attorney General.

106.

TUITION FEES—UNDER SECTION 7681, GENERAL CODE, TERM "WARD" SHOULD BE LIBERALLY CONSTRUED—WHETHER OR NOT PUPIL SHOULD PAY IS QUESTION OF FACT TO BE DETERMINED IN EACH CASE—LOCO PARENTIS.

SYLLABUS:

1. *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.*
2. *A determination of the question of whether or not a child has been in good faith committed by its parents to the care and custody of another for the purpose of having a home provided for it, or whether such living with another is merely for the purpose of evading the law requiring the payment of tuition for school attendance, is in all cases a question of fact to be determined from a consideration of all the facts and circumstances surrounding the case.*
3. *A child who resides permanently in the home of an actual resident of a school district and to which child such actual resident stands in loco parentis may attend the public schools of such district without paying tuition, even though the parents of such child reside outside the district.*

COLUMBUS, OHIO, February 26, 1927.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—I have your inquiry with reference to the right of the board of education of Blanchester, Clinton county, Ohio, to require the payment of tuition from certain pupils attending the Blanchester high school, which reads as follows:

"Blanchester High School is located in the southwest corner of Clinton county, and is very close to the county line. It is in constant trouble over the question of tuition of students from outside of its territory. There are many students there from three other counties, Warren, Brown and Clermont. However, most of these students are paying tuition at the present time.

A case has arisen in which a student from Perry township, Brown county, is attending Blanchester high school and refuses to pay tuition on the ground that he is exempt from the payment of tuition. The board claims that he is not exempt, and I have also rendered the same opinion, and now it asks an opinion of your office upon this question.

Perry township maintains a high school several miles, over bad roads, from the residence of this pupil, or the residence of his father. The mother of this student died when he was young, and he lived with his grandmother for a time. Later his father remarried, and his father took the child and sent him to school up to the time that he started to high school. The grand-

mother then gave this boy board and lodging; the grandmother owns property and is a taxpayer in Blanchester and resides there. The boy has worked in the summers, but has worked in Clermont county.

The boy is living with his grandmother merely for the purpose of going to school, that is admitted by every one. The father states that the boy is a companion to the grandmother, who is over 70 years old, in spite of the fact that the boy leaves her during the summers.

A younger son in this family is attending the high school in Perry township, Brown county, and the township is providing or paying for transportation for this boy for part of the year, but it does not know if it can pay for the whole year.

The father of the boys claims that he would not be able to send either boy to school if transportation was not provided or paid for. He claims that if the Blanchester Board compels the boy attending that school to leave, that he would have to drop out of school, as he could not afford to pay tuition or to send him to the high school of Perry township, Brown county.

The boy in Blanchester has not been to his father's home more than a few times all year, as he stays in Blanchester most of the time.

Apparently from the father's own statements, he could send the boy in Blanchester to school in Brown county if transportation was provided, but he is not willing to keep the boy at home unless he is sure that transportation will be provided for the whole year, which Perry township will not guarantee.

From all the facts, I have ruled that the boy must pay tuition, if he desires to attend high school in Blanchester, and that his living with his grandmother is merely an attempt to keep from paying tuition.

I would greatly appreciate it if you could make this ruling broad enough to cover cases of where parents allow their children to live in town with aunts or uncles or grandparents, and then claim that the child is exempt from the payment of tuition.

There is another case in Blanchester, in which the parents are divorced, and one or both of the parents are remarried. The parents do not live in the Blanchester district, but in other districts which maintain high schools. The children live with, and are being raised by the grandparents, who have full control over them. I have ruled that these children do not have to pay tuition, and the board of education requests your ruling on this question also. I may state that the parent of the boy in the first request, states that his boy has exactly the same status as these children who are being raised by their grandparents."

It is the settled policy of the law that each and every child of school age in Ohio shall have the benefit of the free public school system of the state. The General Assembly is expressly charged by the Constitution with the duty to "make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state."

The legislature has provided by General Code Section 7644 that:

"Each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district. * * * "

By the provisions of Section 7747, General Code, it is provided that pupils who

have completed the elementary school work as provided by law are eligible for admission to high school, and that the county superintendent shall so certify and issue to the pupil a certificate of promotion which shall entitle him to admission to any high school.

Section 7738 of the General Code provides that:

“Every board of education in this state must provide sufficient accommodations in the public schools for all children in their districts compelled to attend the public schools under the provisions of this chapter. Authority to levy the tax and raise the money necessary for such purpose is hereby given the proper officers charged with such duty under the law.”

It is not the intent of the law, however, that pupils may have free access to any and all the schools of the state or that residents of one school district should benefit from the public funds provided by another district, but only where under the law they properly belong; and for the purpose of establishing a rule as nearly equitable as possible, laws have been passed providing for the enumeration of children of school age, so that budgets may be made upon which tax levies are based for the needs of each district, as well as to provide for the proper distribution of trust funds from the state for educational purposes.

It would not be practical, however, to lay down a hard and fast rule requiring pupils to attend school in the district where they had been counted in the school enumeration. This would in many cases be unduly burdensome and would render it practically impossible for some children to attend school at all, as for example, where families had moved in the interim between the taking of the enumeration and the time when school opens.

A more practical rule has been provided by the General Assembly by the enactment of General Code Section 7681, reading 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 * * * . But all youth of school age living apart from their parents or guardians and who work to support themselves by their own labor, shall be entitled to attend school free in the district in which they are employed.”

The difficulty encountered in determining whether or not children may attend school without paying tuition is in construing and applying the above statute.

If the words children, ward, and apprentice were to be construed in their strict technical sense the question would not be so difficult. Children means issue or bodily heirs. Ward means an infant placed by authority of law under the care of a guardian appointed as provided by statute or a custodian by order of court. Apprentice means a person bound in the form of law to a master to learn from him his art, trade or business and to serve him during the time of his apprenticeship.

Coming now to the case set out in your first inquiry, it is apparent that unless the child mentioned therein can be considered as a ward of an actual resident of Blanchester, or unless he can be considered as living apart from his parents and working to support himself by his own labor, he is not entitled to the privilege of attending Blanchester High School without paying tuition. As to the first of these propositions, I would say that if the term “ward” were to be construed in its technical sense there could be no question as to his not coming within that class, but in school matters the courts are inclined to construe this word with much liberality.

In the case of *Yale vs. Middle West School District*, 59 Conn., 489, where the statute provided that "the public schools of the districts shall be open to all children over four years of age in the respective districts", it was held that under the construction given to such language it was not necessary that a child be domiciled in the district, but that it was enough if it was residing in the district in the ordinary sense of that term, and that a child of school age whose parents resided in another state, but who had lived for several years, and expected to continue to live, in the family of a domiciled resident of the district, was entitled to the privileges of the district schools. On page 492 of said report, Andrews, C. J., uses the following language:

"A construction so narrow and technical as is claimed by the defendant would seriously impair the usefulness of the school laws and would defeat various provisions of the statutes. The state is interested to have all the children educated in order that they may become good citizens. Experience has demonstrated that it cost the public much more to support one ignorant or vicious person than to educate many children. On the simple ground of economy the state cannot afford to permit any child to grow up without being sent to school. The school laws recognize this fact and their provisions are framed accordingly. If any child is actually dwelling in any school district, so that some person there has the care of it, and is within the school age, * * * then that child must go to the public school."

It would seem that if the court can award the care and control of a child to a person other than its parents and thus establish a wardship for school purposes, that the parents themselves, who have the undisputed natural care, custody and control of such child, may grant the care, custody and control of such child to someone else, so as to make that child a ward of the other person for school purposes.

Your question is of wide general interest both to children of school age within the state and to the public generally, whose interest it is to give to all children the advantage of an opportunity to obtain an education and at the same time to have, in so far as it is possible for this to be done, the burden of providing this opportunity so distributed that each and every resident of Ohio will bear his proportionate share thereof.

Looking to the history and purpose of the law I have, after an examination of many authorities, come to the conclusion that it is impossible to lay down any general rule in terms more plain than the statute itself and that each individual case must be decided in the light of the circumstances and facts peculiar to the particular case.

I am of the opinion that a liberal construction should be given to the term "ward" as used in this statute; and that if a child be given in good faith by its parents to some other person, and that if the other person obtains the full control and custody of the child and provides such child with food, clothing and shelter, and that it be intended by all parties concerned that the child is leaving the home of its parents to reside with the other person, then such child stands in the relation of a ward to the person to whom the parents have granted the child's custody and would be entitled to attend school in the district of which this person is an actual resident. On the other hand, there would be no question but that parents cannot farm out their children to another, merely temporarily giving him custody for the purpose of having them attend school without paying tuition.

The whole question narrows down to a question of fact which must be gathered from all the circumstances surrounding each particular situation.

In the case described in your letter, you state that the child rarely goes home; that in the summer he works in places other than the residence of either the father or the grandmother; that he returns in the winter to the residence of the grandmother;

and that it is claimed that the grandmother, who is over seventy years of age, gives him his board and lodging in winter in exchange for his companionship. These facts, standing alone, would seem clearly to show that the boy stands in the relation of a ward to his grandmother within the meaning of Section 7681, General Code, and that he is entitled to free tuition in the Blanchester schools. However, in your letter you state "The boy is living with his grandmother merely for the purpose of going to school, that is admitted by everyone." If you mean by this that "everyone" includes the family of the boy and the grandmother, then there can be no question but that he has no right to attend the Blanchester schools without paying tuition. If, however, this simply means the gossip of the neighborhood and it still appears that it is the intention of the father and the grandmother that the boy make his permanent home with the grandmother, it is my opinion he is entitled to attend the Blanchester High School without paying tuition.

In this connection your attention is directed to two opinions of the department reported in Opinions of the Attorney General, 1918, Vol. I, page 543, and Vol. II, page 1367.

In the first of these opinions it was held 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 the second opinion cited this language was used:

" * * * any child who lives in a district temporarily, or simply to establish a school residence, or who resides in the district only during the time school is in session, does not establish a residence for school purposes in such district."

As to your second question, and without again setting forth the facts stated in your letter, it is my opinion that you have correctly advised the Blanchester Board of Education that the children referred to in your second inquiry are entitled to attend school in Blanchester without paying tuition.

Respectfully,
EDWARD C. TURNER,
Attorney General.

107.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND CHARLES H. LINDSEY FOR PURCHASE OF TRACTORS AND TRUCKS, \$205,150.00.

SYLLABUS:

Approval of contract for purchase of equipment.

COLUMBUS, OHIO, February 26, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR MR. SCHLESINGER:—I have your communication enclosing a form of contract between yourself and one Charles H. Lindsey and requesting my opinion as to