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1. LEGISLATURE, SECTION OF ACT OF — WHERE IT ADOPTS ANOTHER SECTION OF SAME ACT BY REFERENCE AND IT IS SUBSEQUENTLY AMENDED — SUBSEQUENT AMENDMENT, FROM TIME OF EFFECTIVE DATE, IS TO BE CONSIDERED AS IF ADOPTED BY ADOPTING SECTION.
2. CHILD, INMATE OF PRIVATE CHILDREN'S HOME OR ORPHAN ASYLUM — ATTENDANCE LOCAL DISTRICT SCHOOL — PRIOR TO ADMISSION WAS RESIDENT OF ANOTHER SCHOOL DISTRICT — TUITION COMPUTED AND PAID, SECTIONS 7677, 7678, HOUSE BILL 105, 94 GENERAL ASSEMBLY.

SYLLABUS:

1. Where a section of an act of the legislature adopts another section of the same act by reference and such adopted section is subsequently amended, such subsequent amendment is from the time of its effective date to be considered as if adopted by the adopting section.

2. The method of computing and paying tuition of a child who is an inmate of a private children's home or orphan asylum and attends school in a district where such home or asylum is located, and who previous to his admission to such home or asylum was a resident of another school district of the state of Ohio, is governed and controlled by the provisions of Sections 7677 and 7678, General Code, as amended by the Ninety-fourth General Assembly.

Columbus, Ohio, January 10, 1942.

Hon. Kenneth C. Ray, Director of Education,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

“House Bill No. 105, enacted by the 94th General Assembly, amended Sections 7677 and 7678 of the General Code which provide for the payment of tuition for children who are inmates of a county, semi-public, or district children's home.

Section 7681 of the General Code, which section was not amended, provides for the payment of tuition for children who are inmates of a private children's home.

We should like your opinion as to whether tuition arising under Section 7681 of the General Code should be paid in accordance with Sections 7677 and 7678 as amended, or whether

payment should be made in accordance with the provisions of these two sections prior to their amendment.”

Sections 7677 and 7678, General Code, had their origin in an act found in 75 O.L., 513, and Section 7681, General Code, had its origin in an act found in 70 O.L., 195. In their original forms, these sections made no provision with respect to the matter about which you inquire, that is, Sections 7677 and 7678, General Code, as originally enacted, contained no provision for the payment of tuition for children who were inmates of county, semi-public or district children's homes, and Section 7681, General Code, in its original form, likewise made no provision with respect to the payment of tuition for children who were inmates of private children's homes. Although these sections were amended several times, it was not until 1915 that any provision was made with respect to the payment of tuition of children who were inmates of children's homes. During that year, Section 7681, General Code, was amended so as to provide inter alia that the board of education in any district in which a public or private children's home or orphan asylum was located, when requested by the governing body thereof, should admit the children of school age of such home or asylum to the public schools of the school district. The amendment further provided that the county commissioners should pay the tuition of such pupils and that the distributive share of school funds from the state for the children of such home or asylum should then be paid to the county commissioners. See 106 O.L., 489.

In 1917, Sections 7677, 7678 and 7681, General Code, were in the same act amended to read as follows:

Section 7677.

“On or about the first day of February and of August the superintendent of the school district in which the inmates of a county, semi-public or district children's home is located shall furnish the county auditor a detailed report showing the average per capita cost, of conducting a school at such home, or the average per capita cost, except for improvement and repairs, of all the elementary schools in such district in case such inmates attend such a school, for the preceding six months. Such report shall also give the names and former residence of all inmates in attendance at school, the duration of attendance, and such other information as the county auditor may require to carry out the provisions of the next section.”

Section 7678.

“A child who is an inmate of a county, semi-public or district children's home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any

child who was not a resident of such school district shall be educated at the expense of the school district of its last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of its last residence. The county auditor upon receipt of the above report from the board of education shall, before making a semi-annual distribution of taxes collected, estimate the amounts chargeable to the various school districts for tuition of inmates of such home, and shall transfer to the proper school funds such amounts.

In case there are inmates from another county, the county auditor of the county in which the home is located shall certify the amount to the auditor of the county of such children's residence who shall forthwith issue his warrant on treasurer of the same county for such amount, and shall proceed to apportion the proper amounts to the various school districts of such county in the manner described above."

Section 7681.

"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 the time in the school year at which beginners may enter upon the first year's work of the elementary schools shall be subject to the rules and regulations of the local boards of education. Inmates of the proper age of county, semi-public and district children's homes shall be admitted after the manner described in section 7676. The board of education may admit the inmates of a private children's home or orphan asylum located in the district, with or without the payment of tuition fees, as may be agreed upon; provided any child who is an inmate of such a home or asylum and previous to admission was a resident of the school district in which such home or asylum 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 asylum a resident of another school district of the state of Ohio and a tuition fee is charged, the same method of reimbursement shall be followed as is provided in sections 7677 and 7678; and provided further, for any such inmate who attends the public schools and who prior to admission to such home or asylum was not a resident of the state of Ohio, such home or asylum shall pay from its own funds such tuition as may be agreed upon. 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."

See 107 O.L., 60. It was not until such amendment that any provision was made in any of these sections for the payment of tuition for a child who was an inmate of a children's home or orphan asylum out of funds belonging to the school district of the last residence of such child.

House Bill No. 105 of the Ninety-fourth General Assembly, re-

ferred to in your letter, amended Sections 7677 and 7678, General Code, so as to read as follows:

Section 7677.

"The clerk of the school district in which a county, semi-public or district children's home is located shall furnish the director of education a report of the names and former residence of all inmates of such homes in attendance in the schools of the district, the duration of such attendance, and such other information as the director of education may require to carry out the provisions of the next section.

Section 7678.

"A child who is an inmate of a county, semi-public or district children's home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of his last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of his last residence. The director of education upon receipt of the above report from the board of education shall approve and pay said expense of education for such non-resident pupils in the same manner as tuition is credited and paid for non-resident pupils as provided in sections 7595-1c and 7595-1d of the General Code."

No amendment, however, was made to Section 7681, General Code, and it remains in the same form as I have heretofore quoted it.

This brings me to a discussion of the question which you propound, that is, whether the tuition of an inmate of a private children's home or orphan asylum who attends the public schools in the district in which such home or asylum is located and who was a resident of another school district of the state of Ohio prior to his admission to such home or asylum, shall be computed and paid pursuant to the provisions of Sections 7677 and 7678, General Code, as amended by the Ninety-fourth General Assembly or as they read prior to such amendment.

In 37 O.Jur., 767, it is said:

"* * * an amendment operates the same as if the whole statute is re-enacted with the amendment; and therefore, an act amending one or more sections of a statute should be considered in connection with, and as if embodied in, the whole statute of which it has become a part. The amended sections are presumed to be made in contemplation of the provisions of the unamended sections of the original act."

The leading case in Ohio in which this question is considered is

McKibben v. Lester, 9 O.S., 627. In the per curiam opinion of the court in that case, it was said:

“Where one or more sections of a statute are amended by a new act, and the amendatory act contains the entire section or sections amended, and repeals the section or sections so amended, the section or sections as amended must be construed as though introduced into the place of the repealed section or sections in the original act, and, therefore, in view of the provisions of the original act, as it stands after the amendatory sections are so introduced.”

This case was approved and followed in state, ex rel., v. Cincinnati, 52 O.S., 419, the first paragraph of the syllabus of which provides in part:

“An amended section of a statute takes the place of the original section, and must be construed with reference to the other sections, and they with reference to it; the whole statute, after the amendment, has the same effect as if re-enacted with the amendment * * *”

See also state, ex rel. Durr, v. Spiegel, 91 O.S., 13, and state, ex rel. Greenlund, v. Fulton, 99 O.S., 168.

The term “statute” is used in the sense of “act” and not in the sense of any one particular section of the General Code. When the court used the expression “section of a statute,” it meant “section of an act.” This is obviously true because the individual sections of the General Code are not ordinarily at least further subdivided into sections, and therefore, when the expression “section of a statute” was used by the court, it must have meant “section of an act.” The term often has this meaning. See 37 O.Jur., 299, Section 3, and Evans v. Lawyer, 123 O.S., 62.

Since Sections 7677, 7678 and 7681, General Code, in so far as they deal with the present question, were first enacted in the act found in 107 O.L., 60, and were all contained in such act, they must, for the purposes of this opinion, be regarded as “sections of a statute” within the meaning of such term as used by the Supreme Court in McKibben v. Lester, supra, and state, ex rel., v. Cincinnati, supra. When the rule announced in these authorities is applied to the question which you propound, the answer is apparent that the provisions of Sections 7677 and 7678, General Code, as amended by the Ninety-fourth General Assembly, control the method of computing and paying the tuition in question and the provisions of such sections prior to their amendment no longer govern.

In the consideration of your question, I have not been unmindful of the rule announced by my predecessor in Opinion No. 4826 found in Vol. III of the Opinions of the Attorney General for 1932, at page 1403. In that opinion, it appears that Section 4647-2, General Code, provided that the board of trustees of a firemen's indemnity fund should be elected as provided in Sections 4601, 4602 and 4603, General Code. These sections were in existence at the time of the enactment of Section 4647-2, General Code, and subsequent thereto were amended. My predecessor advised that Section 4647-2, General Code, adopted the provisions of Sections 4601, 4602 and 4603, General Code, as they existed prior to their amendment and that their subsequent amendment had no effect upon the manner of electing the trustees of the firemen's indemnity fund. The first paragraph of the syllabus of such opinion reads as follows:

"The adoption in an act of the legislature of the whole or a portion of *another* act or statute by specific reference, adopts the law as existing at the time of the adoption and does not include subsequent amendments of the statute or act so adopted unless by express or strongly implied intent."

(Emphasis mine.)

It will be noted that my predecessor limited the rule stated by him to those situations where an act of the legislature adopted all or a portion of another act or statute. He did not have before him a question which involved the rule applicable to your question and, consequently, he gave no consideration to such rule. His conclusion, however, is, in my opinion, correct as applied to the specific question then before him.

In consonance with the foregoing, you are advised, in specific answer to your question, that the method of computing and paying tuition of a child who is an inmate of a private children's home or orphan asylum and attends school in the district where such home or asylum is located, and who previous to his admission to such home or asylum was a resident of another school district of the state of Ohio, is governed and controlled by the provisions of Sections 7677 and 7678, General Code, as amended by the Ninety-fourth General Assembly.

Respectfully,

THOMAS J. HERBERT
Attorney General.