

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a prosecuting attorney may be appointed as city solicitor of a city within the county, and, in accordance with the provisions of section 4307, General Code, be compensated in part from the county treasury for his services as prosecuting attorney to the police or mayor's court.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

4870.

TRANSPORTATION—INMATES OF PUBLIC OR SEMI-PUBLIC HOME—  
 PROPER ITEM IN DETERMINING COST OF EDUCATING TO BE  
 CHARGED TO DISTRICT OF RESIDENCE.

1. *The cost of transporting pupils should be taken into consideration in determining the cost of educating inmates of public or semi-public children's homes where circumstances are such that the cost of that education is charged back to the district of the former residence of such inmates.*

2. *The proper and only rule authorized by law for computing the cost of educating inmates of public, semi-public and district children's homes, for the purpose of charging back to the school district of their former residence, before admission to the home, the cost of their education, is that set forth in Section 7677, General Code, which by analogy, may be extended to apply to high schools as well as elementary schools that is, "the average per capita cost except for improvement and repairs," of maintaining the schools of the district.*

3. *To determine the average per capita cost of maintaining a public school, consideration should be given to all items of expense of conducting the school, including the cost of transporting pupils.*

COLUMBUS, OHIO, January 6, 1933.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"I am attaching herewith a letter from the Auditor of Erie County, which is self-explanatory. It seems under the ruling from the Prosecuting Attorney of Cuyahoga County the Auditor of Cuyahoga County has refused to pay the transportation charge for educating children who are under the supervision of the Cleveland Humane Society and Cuyahoga County Welfare Association, who are being educated in Erie County. The Cuyahoga County Auditor claims the charge for transportation under Section 7681 is illegal.

Will you kindly advise as to whether or not Erie County is entitled to a payment for such transportation. If the payment for transportation as part of the costs of education outside of the County is not proper, I see no reason why Erie County should be educating children belonging to Cuyahoga County at the expense of Erie County."

I gather from the letter of the auditor of your county to you, to which reference is made by you, that certain children who are wards of the Cleveland Humane Society and the Cuyahoga County Welfare Association are being maintained by those organizations in Huron Township Rural and Milan Township Rural School Districts in Erie County and have been attending school in those districts. Accounts have been rendered to the county of their former residence, for the cost of educating these children, in accordance with Section 7677, General Code. The question has been raised by the Cuyahoga County authorities as to the right to include as a part of the cost of this education in the Erie County Schools the cost of transporting pupils in the districts where these children attend school.

These children would be regarded as being inmates of "semi-public children's homes," as that term is used in Section 7681, and cognate sections of the General Code. The payment of the cost of educating these children in the elementary schools is controlled by Sections 7676, 7677, 7678 and 7681 of the General Code of Ohio, which sections read in part, as follows:

"Sec. 7676. The inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. \* \* \*"

"Sec. 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."

"Sec. 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."

"Sec. 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 \* \* \*. Inmates of the proper age of county, semi-public and district children's homes shall be admitted after the manner described in section 7676. \* \* \* 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."

It will be observed from the terms of the foregoing statutes that if circumstances are such that the districts in which the children in question formerly resided in Cuyahoga County, are responsible to the Erie County School Districts for the education of these children, the amount for which they are responsible is as set forth in Sections 7677 and 7678, supra. This cost, as set forth in the statutes, is:

"\* \* \* the average per capita cost except for improvement and repairs, of all the elementary schools in such district \* \* \*."

Although these statutes specifically state that children, under the circumstances mentioned, shall have the advantage of the privileges of the public schools of whatever grade in the district where they are maintained, and, if they were not formerly residents of that district, their education should be "at the expense" of the school district of their last residence, no specific rule is set forth for the computation of that expense if the children attend a high school. It will be noted that the rule for computing this expense as set forth in Section 7677, General Code, specifically states that this expense is "the average per capita cost, except for improvement and repairs, of all the elementary schools in such district." Obviously, the average per capita expense of conducting the elementary schools would not be a proper rule for determining the cost of educating a pupil in a high school. There is no statutory provision which expressly sets forth the manner of computing the cost of educating pupils in high schools under circumstances such as we have here.

Section 7747, General Code, provides that the tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have a legal school residence, and provides further that:

"\* \* \* No more shall be charged per capita than the amount ascertained by dividing the total expenses of conducting the high school attended, exclusive of permanent improvements and repair, said total expenses to include interest charges not exceeding five percent per annum and depreciation charges not exceeding five percent per annum, based upon the actual value of all property used in conducting such high school, by the net annual enrollment in the high school."

The rule stated above, does not specifically apply to the manner of computing the cost of educating an inmate of a public or semi-public children's home who attends high school. It indicates, however, a legislative intent, as does the rule for the computation of proper tuition charges for children attending elementary schools, as set forth in section 7677, supra, and section 7636, General Code, which is applicable under some circumstances, that the entire expense of maintaining a school of whatever grade should be used as the basis for determining the per capita cost of educating the pupils who attend that school.

The cost of transporting pupils is, in my opinion, as much a part of the expense of maintaining the school as is the salary of teachers or the cost of fuel or janitor service or any other cost that might be included in the expense of maintaining the schools.

Inasmuch as the law provides that these classes of children shall have the advantages of the privileges of the public schools of the district wherein the home in which they are maintained, is located, they are certainly entitled to all those benefits, and if the circumstances are such that they are entitled to transportation under the law, that transportation should be furnished to them, as that is one of the advantages of the public schools. The law provides that the cost of their education should be paid by the district of their former residence, and I see no reason why the cost of transportation should not be included as one of the items of that cost of education as well as any other items of cost of maintaining the school where they attend.

I am therefore of the opinion that the cost of transporting pupils should be taken into consideration in determining the cost of educating inmates of public or semi-public children's homes where circumstances are such that the cost of that education is charged back to the district of the former residence of such inmates.

It is not clear from the correspondence enclosed with your letter, whether the Cuyahoga County Auditor's objection to paying transportation charges as you state, was because the bill rendered included items for transportation of these particular children, in addition to the average per capita cost of maintaining the schools of the district in which they attended school, or because transportation costs for all children in the district were included in the total cost of maintaining the schools of the district and thus became an element in computing the "average per capita cost" spoken of in Section 7677, General Code.

Clearly, there is no authority for including as a part of the cost of educating these children the specific cost of their transportation in addition to the average per capita cost of maintaining the schools of the district. Circumstances might be such that these particular children were not transported, yet the per capita cost of maintaining the schools of the district wherein they attended school which would be charged against the district of their former residence in Cuyahoga County, would include a proportionate share of the cost of transportation of children who were transported. Again, circumstances might be such that these were the only children transported in the district. In either case, the proper and only rule, authorized by law, for computing the cost of their education for the purpose of charging it against the district of their former residence, is that set forth in Section 7677, General Code, which is to determine "the average per capita cost except for improvements and repairs, of all the elementary schools of the district."

To compute this "average per capita cost" there should be taken into consideration the cost of transporting pupils in the district, whether it be these particular pupils or others, as well as other costs of maintaining the schools and the per capita cost so determined, is all that can be charged against the district of the former residence of these pupils. By analogy, and consideration of other statutes, the average per capita cost may be determined for high school pupils as well as elementary pupils although there is no specific statute covering this matter.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*