

OPINION NO. 74-076

Syllabus:

1. A student who has reached the age of 18 is entitled to attend school free in the district of his parents' or guardian's actual residence, or, if he works to support himself by his own labor, in the district in which he is employed.

2. For purposes of R.C. 3313.64, the term "guardian" must be given a liberal construction, and can include a person who stands in loco parentis to an adult student.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: William J. Brown, Attorney General, September 13, 1974

Your request for my opinion reads as follows:

"A student who is 18 years of age and in his last year of high school is now living in another county, but wishes to attend a school district within this county this summer and next year. He has stated that he would live with his uncle who

is a resident of this county and the school district but is not clear as to whether he would be supported by himself, his uncle or his family.

"The issue which seems to be apparent in this case is what effect Section 3109.01 of the Ohio Revised Code, making 18 year olds adults, has on Section 3313.64 of the Ohio Revised Code which provides free schooling for residents of the school district? As is defined in the above statute a school resident is one who actually resides in the school district. In this case, the student is legally emancipated and theoretically can choose his own residence. Is our school district required to provide him free schooling or will tuition be necessary?

R.C. 3313.64, which provides that the public schools shall be free to all residents of school age, reads in part as follows:

"The schools of each city, exempted village, or local school district shall be free to all school residents between six and twenty-one years of age, but the time in the school year at which beginners may enter upon the first year's work of the elementary school shall be subject to the rules and regulations of the board of education. School residents shall be all youth who are children or wards of actual residents of the school district.

* * * * *

"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.

* * * * *

(Emphasis added.)

Although the persons included within the scope of the statute were previously well defined, recent legislation lowering the age of majority has caused confusion in determining the operation of R.C. 3313.64. R.C. 3109.01 provides as follows:

"All persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes."

The difficulty results from the fact that school residence depends upon the residence of the student's parent or guardian, not that of the student himself. R.C. 3313.64. No provision is made for the emancipated student, except for one who works to support himself by his own labor. Such a student is entitled to attend school free in the district in which he is employed. However, no provision is made for the emancipated student who does not support himself or live with his parents or guardian. As an adult, he can choose his own legal residence; but the operation of R.C. 3313.64 does not depend upon his residence.

In order to answer the question you present, I must first consider the case of an 18-year old student who continues to live with his parent or guardian. R.C. 3313.64 requires a free public education for all "school residents" until they reach the age of 21. However, school residents are defined as "children or wards of actual residents of a school district." It might be argued that an adult cannot be a "child". However, the term "children" is often used to mean issue or adopted children regardless of age; it does not necessarily apply only to minors. See Meisner v. United States, 295 F. 866 (1924).

A person may also be the "ward" of another for purposes of R.C. 3313.64, even if he is an adult. For one to become the ward of another, in the strict sense of the term, it is necessary that a guardian be appointed for him by a probate court. In order for a guardian to be appointed for one who has reached the age of majority, R.C. 2111.02 requires that the ward be incompetent as defined in R.C. 2111.01(D). Since that procedure is obviously inapplicable to the present situation, I must conclude that an adult cannot, in the strict sense of the term, be the ward of another.

Previous Opinions of the Attorney General, however, have held that technical definitions are not to be applied, and that the term "ward" as used in R.C. 3313.64, is to be liberally construed. An extensive list of these Opinions is contained in my Opinion No. 72-030, Opinions of the Attorney General for 1972. These Opinions held that the resident need only stand in loco parentis to the student in order for the guardian-ward relationship to exist.

However, it can be argued that no one can stand in loco parentis to an adult, because that relationship requires custody of the ward by the guardian. Custody is an integral feature of the in loco parentis relationship. Clark v. Bayer, 32 Ohio St. 299 (1877); Wilson v. Wilson, 14 Ohio App. 2d 148 (1968). Custody, by definition, involves some degree of control, and one who is competent and has reached the age of majority is not legally under the control of another.

It is significant that the parents of a full-time student are not relieved of all parental duties when the student reaches the age of eighteen. R.C. 3103.03, which prolongs the parental duty of support, reads in part as follows:

"Notwithstanding section 3109.01 of the Revised Code, the parental duty of support to children shall continue so long as the child continuously attends on a full-time basis any recognized and accredited high school, even when such child has attained the age of majority. Such duty of support shall continue during seasonal vacation periods."

Thus, the General Assembly has recognized that although a student over eighteen years of age is an adult for all purposes, the duty of care continues even though the right to custody has, presumably, ended. However, one is usually considered the concomitant of the other. Parents and guardians are said to have "care and custody" of their children or wards.

Consequently, the General Assembly has created a relationship which has some of the attributes of a parent-child or guardian-

ward relationship, but not necessarily all. Consider also R.C. 5107.03, which provides for aid for needy children, and reads in part as follows:

"Subject to Chapter 5107. of the Revised Code, and to the availability of revenues for the purposes thereof, a needy child residing in the state shall be entitled to aid if the following conditions are fulfilled:

* * * * *

"(C) Such child is less than eighteen years of age, or such child is less than twenty-one years of age and is regularly attending school as defined by the Department of Public Welfare."

Clearly, students who have reached the age of 18 fall into a special category, which may be described as sui generis. Whether they can qualify as children and, especially, wards, for the purposes of R.C. 3313.64, is best decided on the basis of the purpose of that statute. In Board of Education v. Dille, 109 Ohio App. 344 (1959), the court stated at 349 as follows:

"School attendance is mandatory in Ohio, and there is a corresponding powerful public policy that free attendance at an appropriate public school shall be available to every child of school age. Such is the primary purpose of Section 3313.64, Revised Code. That statute must, therefore, be liberally construed to the accomplishment of its intended purpose."

In Opinion No. 106, supra, my predecessor stated in the first branch of the syllabus as follows:

"The term ward, as used in Section 7681. General Code [R.C. 3313.64] 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."

Consequently, I must favor a liberal interpretation. Moreover, the practical consequences of a strict construction preclude its adoption. See R.C. 1.49(E). If I were to construe the term in a manner which precluded students over eighteen years of age from being wards, a student who had been attending school free in a district as the ward of an actual resident, would no longer be entitled to do so upon attaining the age of eighteen. Such an anomalous conclusion is clearly at variance with the intent of the General Assembly. Therefore, if an eighteen year old student resides with his parent or guardian (broadly construed) within a school district, such student is entitled to attend school in that district without paying tuition.

The question of whether a student has actually entered into a relationship of in loco parentis with a resident of a school district has always been considered a factual one. In this case, the determination is further complicated by the hybrid nature of such a relationship when the ward is an adult. However, the principles applicable to the ordinary guardian-ward relationship should also be applicable to this situation.

The question of school residence is one which must be decided in the first instance by the board of education. In Opinion No. 545, supra, my predecessor quoted with approval the second branch of the Syllabus of Opinion No. 106, supra, which reads as follows:

"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."

In Opinion No. 1534, Opinions of the Attorney General for 1918, my predecessor stated as follows at page 1367:

"* * * 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."

See also, Opinion No. 1140, Opinions of the Attorney General for 1918, page 543. A summary of the Opinions discussing this question is contained in Opinion No. 1581, Opinions of the Attorney General for 1960, page 539.

There is no single reliable indication of the presence of a genuine guardian-ward relationship. No legal formalities are necessary. Spriggs v. School District, 385 F. 2d 254 (CA 8, 1967). A student may live with a guardian while school is in session, and live elsewhere to work at a job in the summer, without losing his school residence. Opinion No. 106, supra. Nor does the fact that some of the cost of a student's care is borne by someone other than his guardian, necessarily preclude a guardian-ward relationship. See Opinion No. 4864, Opinions of the Attorney General for 1932, page 1472. The determination is a factual one, which can be made only on the basis of all circumstances in the particular case. Therefore, the student in question is entitled to free tuition in the district wherein his uncle resides, only if his uncle becomes his guardian, as the term is used in R.C. 3313.64. If the student lives with his uncle for the purpose of establishing a school residence, rather than for the purpose of establishing a home, he is not entitled to free tuition. However, if the student works to support himself by his own labor, he is entitled to attend school free in the district in which he is employed, regardless of the residence of his parents or guardian.

In specific answer to your question, it is my opinion and you are so advised that:

1. A student who has reached the age of 18 is entitled to attend school free in the district of his parents' or guardian's actual residence, or, if he works to support himself by his own labor, in the district in which he is employed.

2. For purposes of R.C. 3313.64, the term "guardian" must be given a liberal construction, and can include a person who stands in loco parentis to an adult student.