

take and screen house for pump house, Ohio State University, Columbus, Ohio, and calls for an expenditure of five thousand eight hundred and forty dollars (\$5,840.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with Section 11 of House Bill 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which Leo Yassenoff and M. K. Teach appear as sureties, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this date noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1008.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN  
HOLMES COUNTY.

COLUMBUS, OHIO, October 9, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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1009.

CHILDREN—INMATES OF COUNTY, SEMI-PUBLIC OR DISTRICT CHILDREN'S HOME—RIGHT TO ATTEND ALL PUBLIC SCHOOLS OF DISTRICT—WHERE TUITION AND TEXTBOOKS CHARGEABLE.

SYLLABUS:

1. *A child who is an inmate of a county, semi-public or district children's home, and who before admission or commitment to such home had been a resident of the school district in which the home is located, is entitled to the privileges afforded by any and all of the public schools of the district, and the board of education of said school district is required to furnish such child with the necessary school books, if the same cannot be furnished by the parents or guardian of the child.*

2. *A child who is an inmate of a county, semi-public or district children's home, and who before admission or commitment to such home had been a resident of some other school district than that in which the home is located, is entitled to any and all of the privileges afforded by the public schools of the school district in which the home is located, including the right to have furnished the necessary and proper school books,*

*if the parent or guardian of the child is unable to furnish the same, and the cost of furnishing such educational advantages to such child should be charged against the district of the child's last residence prior to admission or commitment to the home, as provided by Section 7678 of the General Code.*

COLUMBUS, OHIO, October 9, 1929.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

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

“Section 7676 of the General Code provides that the inmates of a county children's home shall have the advantage of the privileges of the public school, and so far as possible, such children shall attend such school or schools in the district within which such home is located.

Section 3088 of the General Code provides that children of school age, who are inmates of a county children's home, shall be given an elementary education after the manner described in Section 7676, G. C.

Question 1: When a child, an inmate of the county children's home, was, before being committed to the home, a resident of the school district in which the home is located, is such child entitled to attend the high school or normal school of the district, and if so, is the board of education or the county home authorities required to furnish such child with the necessary text books?

Question 2: If such child is not a resident of the school district in which the home is located, is it entitled to the privileges of the schools of the district, including high school and normal school, and may the tuition of such child be charged against the district of its residence prior to admission to the home, as provided for in Section 7678 of the General Code?”

Sections 3088 and 7676, General Code, read as follows:

Sec. 3088. “Children of school age who are inmates of a county, semi-public or district children's home shall be given an elementary education after the manner described in Section 7676.”

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.

Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the city, township, village or special board of education, having jurisdiction over the school district within such home is located.

Such board of education shall employ with the approval of the superintendent of the home necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light.”

Sections 7678 and 7681, General Code, read in part, as follows:

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. \* \* \* ”

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, 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. \* \* \* ”

Your inquiry is no doubt prompted from the fact that the Legislature, in enacting Section 3088, supra, made use of the word “elementary” as descriptive of the kind of education to be given to inmates of a county, semi-public or district children’s home. It will be observed that in the sections quoted above, the education and educational advantages spoken of are not so limited, but on the contrary, it is provided that all such children “shall have the advantages of the privileges of the public schools” and that any such children who had, prior to becoming members of the institution, been residents of the district where the home is located shall be “entitled to an education at the expense of such district”, and all others shall be “educated” at the expense of the district of their last residence.

In other words, while Section 3088, General Code, limits the education to be given to an “elementary” education, Sections 7676, 7678 and 7681, General Code, extend to inmates of county, semi-public and district children’s homes all the privileges of the public schools and the opportunity to acquire such an education as is afforded by the public schools without limitation.

From the fact that all the above mentioned sections of the Code were enacted by the same legislation in 1917, and were incorporated in the same Act, (107 O. L., 61), it is pertinent to inquire whether or not the limitation, if any, contained in Section 3088, General Code, on the educational advantages to be extended to the inmates of the institutions described therein are to govern the workings of the other related sections of the Code, and if so, what is meant by an “elementary education.”

The word “elementary” as applied to schools, has a technical meaning, defined by statute, and is limited to a school of lower grade than a high school. Section 7648, General Code. A high school is defined in Section 7649, General Code, as a school of a higher grade than an elementary school. Normal schools maintained by a city board of education, by authority of Section 7647, General Code, or by a county board of education, by authority of Section 7654, General Code, are understood to be schools maintained for the training of teachers, and have been held to be a part of the public school system of the State. *Brown vs. Board of Education*, 6 N. P., 411, 8 O. D., 378.

While the word “elementary”, when used as applying to schools, should be construed in its technical sense, as defined by statute, unless the context clearly points to a different use of the word, the same cannot be said, in my opinion, of the use of the word when applied to education, unless the context points to such use.

It is a primary rule of interpretation of statutes, that in order to ascertain the legislative intent, a statute is to receive that meaning which the ordinary use of its language warrants, words not technical being taken in their ordinary familiar acceptation with regard to their general and popular use. The meaning thus arrived at must be adopted where it does not lead to an absurdity, if, from a view of the whole law and other sections of the law in *pari materia*, no different legislative intent is apparent. Section 389 et seq. Lewis Sutherland on Statutory Construction.

The term elementary education, I believe, is generally used in contradistinction to

what is generally termed higher education, or college education, an education of a wider scope than that afforded by the public school system. The Standard Dictionary, in defining the word "pupil", uses the following language:

"In the United States 'pupil' is quite generally used to denote a scholar in an elementary or secondary school, as distinguished from 'student' in a higher institution."

It is significant that Section 3088, General Code, while it speaks of the education to be given to inmates of children's homes as an "elementary education", as well specifically provides that it shall be after the manner described in Section 7676, General Code. Section 7676, General Code, provides that the inmates of such homes shall have the advantages of the privileges of the public schools and does not limit those advantages in any respect other than such advantages as the public schools afford.

Again, it is provided in Section 7681, General Code, that:

"Inmates of the proper age, of county, semi-public and district children's homes shall be admitted after the manner described in Section 7676, General Code."

Statutes which are not inconsistent with one another, and which relate to the same subject matter are said to be in *pari materia* and should be construed together, and effect should be given to all their various provisions. They are all to be compared, harmonized if possible, and, if not susceptible of a construction which will make all of their provisions harmonize, they should be made to operate together so far as possible consistently with the evident intent in their enactment. This is especially true when the acts are passed at the same session of the Legislature. If it is to be presumed that acts passed at the same session of the Legislature are imbued by the same spirit and actuated by the same policy and they should be construed each in the light of the other.

The rule, that statutes pertaining to the same subject are in *pari materia* and should be construed together, is not confined in its application to statutes passed by the same Legislature, but applies to all statutes on the same subject and which are said to be in *pari materia*. The laws relating to compulsory education, although not passed at the same time as those under consideration, relate to the same subject matter and bear such a relation to the sections herein referred to as to require their consideration under this rule of construction in any attempt to harmonize the various provisions of law relating to the subject.

By the terms of Sections 7762 et seq., General Code, commonly known as the compulsory education law, it is provided that children between the ages of six and eighteen years of age, are of compulsory school age and that all persons, including parents, guardians and other persons having the care of children, shall cause such children who are of compulsory school age, to attend either public, private or parochial schools, under penalties prescribed by law for their failure to do so. There are certain exceptions to this rule which need not be considered here, for the reason that no exception is made with particular reference to the inmates of children's homes. It will also be noted that the requirements contained in the compulsory education law make no mention of elementary schools or high schools and provide that all children of compulsory school age, that is, between the ages of six and eighteen years, come within the terms of the law.

It would lead to an absurdity, and prevent the workings of the compulsory education law to so interpret Section 3088, General Code, as to limit the right of the inmates of children's homes to attendance at elementary schools only and not admit

them into other public schools after the completion of the work of the elementary schools before they were eighteen years of age.

Statutes constituting a system should be so construed as to make that system consistent in all its parts, and uniform in its operation. *Cincinnati vs. Connor*, 55 O. S., 82. In this case the court said :

“It is to be presumed that a code of statutes relating to one subject, was governed by one spirit and policy, and intended to be consistent and harmonious, in its several parts. And where, in a code or system of laws relating to a particular subject, a general policy is plainly declared, special provisions should, when possible, be given a construction which will bring them in harmony with that policy.”

The history of education in Ohio clearly points to the fact that it has been the consistent policy of all legislation on the subject that all the resident youths of the state should be entitled to the privileges of the free public school system of the state, and it surely would be inconsistent with this policy to interpret the language of any statute or to presume it ever to have been the legislative intent that the wards of the state should have fewer educational opportunities than other children.

This same view was entertained by a former Attorney General, as expressed in his opinion reported in *Opinions of the Attorney General for 1924*, at page 509, where it is held :

“Children of high school age and who are otherwise eligible to high school, who are inmates of a county children’s home, may be and under certain circumstances should be transported to high school. Where no high school is maintained in the district within four miles of the residence of such children nor high school branches taught in the elementary school as provided in Section 7648, General Code, pupils inmates of the county children’s home otherwise eligible to high school would be entitled to transportation, or in lieu thereof board and lodging. The duty of providing such transportation to high school would rest in the first instance upon the board of education of the district wherein the children’s home is located, but the expense thereof should be charged to the school district of the residence of such pupils as part of the per capita cost of such schooling, in accordance with the provisions of Sections 7677 and 7678, General Code of Ohio.”

At the time of the rendition of the aforesaid opinion, certain statutes relating to the transportation of high school pupils, which have since been changed, required that the transportation of high school pupils in a school district be furnished under certain circumstances. In the course of the aforesaid opinion, in referring to Section 7676, General Code, it is said :

“This section clearly provides that the inmates of a county children’s home shall have the advantages of the privileges of the public school and they are in that respect placed in the same position as other children. One of the privileges of the public schools that must be made available to every child is the privilege of high school education.”

Believing as I do, that the inmates of children’s homes are entitled to all the privileges of the public schools maintained in the district where the homes are located, after the manner described in Section 7676, and cognate sections of the General Code, it becomes necessary to consider the other questions mentioned in your inquiry, which

are: How shall the necessary text books be furnished for the use of such children and how shall the school district be reimbursed for the expense of furnishing school privileges to those children whose residences prior to admission to the home were in other districts?

It will be observed, from the terms of Section 7676, General Code, *supra*, that when a school is maintained at the home the board of education of the school district where the home is located shall employ the teachers and furnish the necessary text books and educational equipment and supplies. The trustees of the home shall furnish necessary furniture, fuel and light. These are the only statutory provisions directly applicable to the question and from these it would seem to have been the legislative intent that text books for the schooling of these children should be furnished by the district within which the home is located whether a school is maintained at the home or not. Certainly, if a school is maintained at the home and the board of education is required to furnish the text books and teachers, there is no reason why the same method should not be followed if they attend the regular schools of the district, and I believe no question has ever arisen, so far as the books to be used in the elementary grades are concerned. I see no reason why any different rule should be followed if the children attend a high school.

Boards of education may furnish text books in any case, free of charge, by authority of Section 7739, General Code, but are not required to do so unless circumstances are such as are described in Section 7777, General Code.

So far as furnishing text books for children who are in a children's home and who attend school in the district where the home is located, is concerned, the board of education is in no different position than it would be if the children were not in the home, at least as to those children whose former residence was in the district. The board would be required, in accordance with Section 7777, General Code, to furnish the text books for those children, if within compulsory school age, whether grade school or high school pupils, if the pupils or their parents or guardians were unable to do so, as is probably the case with most children in a children's home. If a child who is in a children's home has a parent or guardian who is able to furnish text books for the child, whether the child's former residence was in the district of the home or some other district, he should be required to do so. The mere fact that the child has been placed in a children's home, does not relieve the parent or guardian of the child, if there is such a person, of the duty to provide means for the child to attend school, and they may be required to do so if it is within their means.

As to children who were not residents of the district where a home is located, prior to their admission to the home, and who attend the public schools of the district, it will be observed by the terms of Section 7678, General Code, that it is provided:

“ \* \* \* 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. \* \* \* ”

In my opinion, the above clause applies to those who attend any of the public schools of the district. I am therefore of the opinion, in specific answer to your questions:

First, a child who is an inmate of a county, semi-public or district children's home, and who before admission or commitment to such home had been a resident of the school district in which the home is located, is entitled to the privileges afforded by any and all of the public schools of the district, and the board of education of said school district is required to furnish such child with the necessary school books, if the same cannot be furnished by the parents or guardian of the child.

Second, a child who is an inmate of a county, semi-public or district children's home, and who before admission or commitment to such home had been a resident of some other school district than that in which the home is located, is entitled to any and all of the privileges afforded by the public schools of the school district in which the home is located, including the right to have furnished the necessary and proper school books, if the parent or guardian of the child is unable to furnish the same, and the cost of furnishing such educational advantages to such child should be charged against the district of the child's last residence prior to admission or commitment to the home, as provided by Section 7678 of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1010.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE W. HARDI-  
MAN, CITY OF COLUMBUS, FRANKLIN COUNTY.

COLUMBUS, OHIO, October 9, 1929.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title and deed form, and encumbrance estimate No. 5640, relating to the proposed purchase of Lot No. 8 of Critchfield and Warden's Subdivision of the south half of the north half of Lot Number 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, pp. 234, 235, Recorder's Office, Franklin County, Ohio.

An examination of the abstract of title of said lot shows that George W. Hardiman, the owner of record of said lot, has a good merchantable title to the same, subject to the following exceptions:

1. On December 14, 1926, John G. Tate and Amanda Tate, then the owners of said lot, executed and delivered to one B. F. Hughes, a mortgage on said lot for the purpose of securing the payment of the mortgagor's note of even date therewith, in the sum of \$600.00. This mortgage was on the same day assigned and transferred by the mortgagee to one Jesse Spira, who is apparently now the owner and holder of said note and mortgage. This mortgage is not satisfied of record and to the extent of the amount remaining unpaid thereon is a lien on the property here under investigation.

2. On June 11, 1927, said John G. Tate, being then the sole owner of said lot, executed and delivered to The Columbian Building and Loan Company a mortgage on the premises here under investigation, to secure the payment of his note of even date therewith, in the sum of \$750.00. This mortgage has not been satisfied of record and the same is likewise a lien on this property to the extent of the amount remaining unpaid upon said mortgage and the note secured thereby.

3. On June 18, 1928, said John G. Tate, then the owner of said lot, executed and delivered to one J. Spira, a mortgage on said lot for the sum of \$424.00, to secure the payment of his promissory note of even date therewith in said amount. This mortgage is not satisfied of record and the same is likewise a lien upon said lot to the extent of the amount unpaid upon said mortgage, and upon the note secured thereby.

4. On December 7, 1928, said George W. Hardiman executed and delivered