

**Note from the Attorney General's Office:**

1963 Op. Att'y Gen. No. 63-261 was overruled in part by  
1980 Op. Att'y Gen. No. 80-101.

261

**SYLLABUS:**

1. Pursuant to Section 2151.34, Revised Code, the governing authority of the juvenile detention home shall when possible provide "a comparable educational program" for those children of school age in the home, and the expense thereof shall be treated in the same manner as any other expense of operation of a juvenile detention home.

2. When it is not possible for the governing authority of a juvenile detention home to provide "a comparable educational program," an educational program shall be provided by the school district in which the home is located by force of Section 3313.55, Revised Code, and the expense thereof shall be assumed by the county.

Columbus, Ohio, June 5, 1963

Hon. Roger W. Tracy  
Auditor of State  
State House  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads, in pertinent part, as

follows:

"1. Pursuant to the provisions of Section 3313.55, Revised Code, is it the responsibility of a school district, within the same county as a county juvenile detention home from which sixty per cent or more of the children therein are residents of the school district, to provide the teachers and pay the teachers' salaries, furnish the textbooks and supplies that are used in said detention home; or may the total cost of such educational program for the children in a county juvenile detention home be considered a financial responsibility of the county under the provisions of Section 2151.34, Revised Code?"

"2. If it is determined that the responsibility for such educational program in a county juvenile detention home is a responsibility of the school district having sixty per cent or more children in the home, may the school district charge tuition to other school districts as provided in Section 3317.08, Revised Code?"

It is clear that the responsibility for cost of education of children in juvenile detention homes lies with the county. (Your question seems to contemplate a detention home serving one county only and the discussion herein is directed to that situation). Where, however, the detention home is serving a district embracing more than one county (as provided for in Section 2151.34), the same principles apply and the expenses should be paid as provided in Section 2151.34.

Former Section 1670 of the General Code, 113 Ohio Laws, 530, provided for the maintenance by the county of juvenile detention homes and provided that the superintendent and matron of them, among other things, should be qualified as teachers of children. Subsequently, the statute was amended to delete the qualification of being teachers of children for the superintendent and matron, Section 1639-22, General Code, 117 Ohio Laws, 520. One of my predecessors interpreted this deletion to mean that the county commissioners no longer had the responsibility for providing education for the inmates in a juvenile detention home, Opinion No. 868, Opinions of the Attorney General for 1946. That opinion notes that the Board of Education could refuse admittance to those inmates who are known as delinquents into the regular schools therefore making it necessary for the education of them to take place at the detention home itself. The thrust of this opinion, how-

ever, is that the responsibility of the children's education rests with the school board, as the law stood at that time. The opinion does not go into the question of the expense of providing this education.

Since the issuance of the above opinion, the statute has been amended and the successor to the statutory sections discussed above is Section 2151.34. That section, in pertinent part, provides:

“\* \* \* The judge, or the directing board of a district detention home, may appoint a superintendent, a matron, and other necessary employees for such home and fix their salaries. During the school year, when possible, a comparable *educational program with competent and trained staff shall be provided for those children of school age.* A sufficient number of trained recreational personnel shall be included among the staff to assure wholesome and a profitable leisure-time activities. Medical and mental health services shall be made available to insure the courts all possible treatment facilities shall be given to those children placed under their care. In the case of a county detention home, such salaries shall be paid in the same manner as is provided by section 2151.13 of the Revised Code for other employees of the court, and the necessary *expenses incurred in maintaining such detention home shall be paid by the county.* In the case of a district detention home, such salaries and the necessary expenses incurred in maintaining such detention home shall be paid as provided in section 2151.341 \* \* \*”

(Emphasis added.)

Thus, the change of the statute makes it clear that the responsibility rests with the court, and therefore the county, to provide a “comparable education” and that necessary expenses incident to the operation of a detention home *shall be paid by the county* and the Board of County Commissioners has the duty to appropriate the necessary funds. Clearly, the expense of providing the “comparable education” is a necessary expense incident to the operation of the home. (See Opinion No. 2034, Opinions of the Attorney General for 1961.)

The change in the statute apparently reflects a legislative intent to fix firmly the responsibility for providing a “comparable education” to inmates of the detention home with the juvenile court or governing board, without reverting to the language of

former Section 1670 of the General Code which would *require* the detention homes to have qualified teachers on their staffs. It is significant that while Section 2151.34 provides that a competent and trained staff be provided for educational purposes, it does not require that such staff necessarily be a part of the detention home staff. This intent recognizes that it is impractical, if not impossible, for many detention homes to provide teachers from their staffs, particularly since that duty arises only during the school year.

I am not unmindful of the provisions of Section 3313.55 of the Revised Code which you have cited. Ordinarily, the phrase "any public institution" would seem to embrace a county detention home and bring it within the mandatory provisions of Section 3313.55, but the general provisions of that statute must be read in the light of the specific command of Section 2151.34. The latter section specifically gives to the governing authority of a detention home the duty to provide an educational program and to pay for it. Yet, the legislature when enacting that section did not see fit to amend Section 3313.55 to include detention homes among the exceptions exempted from the operation of that statute. The final sentence of Section 3313.55 deals with the payment for rendering services to institutions for the care and treatment of delinquent children and clearly contemplates that such services shall be rendered. The two sections of the Code can only be reconciled by construing them to mean that the school board does not have the duty to take the initiative in providing those services, as the Opinion of the Attorney General for 1946 held that the predecessor section required, but that the legislature recognized that the school boards nevertheless have a duty to perform, when called upon.

In reading Sections 3313.55 and 2151.34 together, the necessary implication is that the legislature intended to shift the responsibility for such education to the counties. By making it clear that the school boards were not obliged to take the initiative in furnishing their services and by pointedly omitting to revert to the requirement that the detention homes have qualified teachers on their staffs (contained in the earlier statute) when the statute concerning detention homes was amended, the legislature must have intended that the responsibility for providing and paying for an

educational program rests with the governing authority of the detention home; but, where such authority must look beyond its own staff in fulfilling its statutory duty, it may call upon the school board in which the home is located. This construction is the only one by which Sections 3313.55 and 2151.34 may be read in harmony with each other. The provision of Section 2151.34 that the county shall pay all of the expenses incidental to the maintenance of the home is in complete accord with the last sentence of Section 3313.55, which provides that such services shall not be paid out of funds for the special schooling costs. Clearly, then, the expenses a school board may incur in furnishing the schooling must be assumed by the county, and an appropriation should be made therefor.

This legislative policy, of course, recognizes that when a detention home is unable to retain qualified teachers on its staff and otherwise provide for education, the school board is the only authority with the competence, expertise and available supplies to carry on an educational program.

In view of the foregoing, it is not necessary to consider your second question.

It is my opinion and you are advised that:

1. Pursuant to Section 2151.34, Revised Code, the governing authority of the juvenile detention home shall when possible provide "a comparable educational program" for those children of school age in the home, and the expense thereof shall be treated in the same manner as any other expense of operation of a juvenile detention home.

2. When it is not possible for the governing authority of a juvenile detention home to provide "a comparable educational program," an educational program shall be provided by the school district in which the home is located by force of Section 3313.55, Revised Code, and the expense thereof shall be assumed by the county.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General