Mr. Arthur C. Campbell, Commissioner
Department of Correction
804 Indiana State Office Building
Indianapolis 4, Indiana

Dear Mr. Campbell:

This is in reply to the following request for an Official Opinion:

"Indiana is signatory along with thirty-three (33) other states to the Interstate Compact on Juveniles (Laws 1957, Chapter 98). As you are aware, this Compact provides for cooperative supervision of out-of-state juveniles on parole and probationers.

"The Division of Parole may from time to time accept an out-of-state juvenile for supervision who,

"(a) Will live in a foster home and,

"(b) Is either required by law to attend school, or wishes to continue his public education if he is above the mandatory age of attendance.

"The problem of payment of transfer tuition fees has arisen in conjunction with the enrolling of one such case into a public school.

"Our questions are:

"1. Must transfer tuition fees be paid for an out-of-state juvenile who is being supervised by Indiana parole authorities under the Interstate Compact, and who resides in a foster home, and

"2. If such fees must be paid, who is liable for such payment?"

Article VII of the Interstate Compact on Juveniles, the same being ratified and approved by the Acts of 1957, Ch. 98, and found in Burns' (1961 Supp.), Section 9-3601, concerns
Cooperative Supervision of Probationers and Parolees and reads, in part, thus:

“(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called ‘sending state’) may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called ‘receiving state’) while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. * * * A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

“(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

* * *

“(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.”

(Our emphasis)

Article VIII of such Compact follows:

“(a) That the provisions of articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.
“(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV(b), V(b) or VII(d) of this compact.” (Our emphasis)

It is to be noted that the nonresident “probationer or parolee” which a receiving state may agree to supervise must be a delinquent juvenile, placed on probation or parole, which terms are defined by Article III of the Compact thus:

“* * * any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; ‘probation or parole’ means any kind of conditional release of juveniles authorized under the laws of the states party hereto; ‘court’ means any court having jurisdiction over delinquent, neglected or dependent children; ‘state’ means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and ‘residence’ or any variant thereof means a place at which a home or regular place of abode is maintained.” (Our emphasis)

Article I of the Compact provides that “party states shall be guided by the noncriminal reformatory and protective policies which guide their laws” concerning delinquent juveniles generally and that the Compact shall be liberally construed to accomplish such purpose. (Our emphasis)

Our law confers court jurisdiction of delinquent, dependent and neglected juveniles by the Acts of 1945, Ch. 356 [Burns' (1956 Repl.), Section 9-3201 et seq.], which has as its express purpose to secure for a child removed from his own family “custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents” and also recognizes the principle that the state may intervene to enforce the legal obligations due to them and from them.
One such obligation is that of compulsory education for every child between the ages of seven and sixteen as provided by the Acts of 1921, Ch. 132, as found in Burns' (1948 Repl.), Section 28-506.

The Acts of 1947, Ch. 179, as found in Burns' (1948 Repl.), Sections 28-3723 and 28-3724, reads as follows:

"28-3723. Dependent children and/or public wards or children otherwise receiving foster care living in a private home of a taxpayer of the community shall be permitted to attend the public schools of the school district in which said private home is located or of which the children in the locality attend. Provided, That the private home in which said children reside is to be the home for said children for an indefinite period, including children being kept there under the supervision of the county department of public welfare or other agency given supervision thereof according to law, and the said children are not living in said home for the sole purpose of getting an education." (Our emphasis)

"28-3724. All children under foster care shall be entitled to be educated under the provisions of the compulsory education law as other children living in the same district or locality are educated without discrimination and with the same privileges and benefits, and are to be admitted without delay when applying for such education. Any question which may arise between the officials of the different school districts regarding said children shall not delay their admission to the proper school in the district in which said children reside or at which the children in the locality attend, or affect their treatment or education in any way. Transfer tuition charges shall be paid in the manner and as provided by law in case of transfer from one school corporation to another school corporation. In the event an agreement can not be reached by the officials of the school districts or corporations concerned an agreed statement of the facts shall be submitted to the state superintendent of public instruction for his decision. The decision of said state superintendent of public
instruction shall be final and conclusive.” (Our emphasis)

The 1955 O. A. G., page 113, No. 29, concerns transfer tuition charges for education of children who are wards of the court placed in foster homes and construes the word “resident” as used in the general transfer statute [Acts of 1921, Ch. 253, as amended, and found in Burns’ (1948 Repl.), Section 28-3701], determining that the term applied to transfer tuition charges means legal settlement as distinguished from simple or actual residence, i.e. “living,” and saying that a child is considered to have such legal settlement or domicile which he had at the time he was made a ward of the court, which legal settlement continues during wardship.

On pages 115 and 116 of such Opinion, basic principles of the law applicable to guardians and wards are applied to determine that such child is, in fact, a ward of the court and that the court stands in loco parentis to the child even though, under our Juvenile Court Act, the court specifically makes the child a ward of the county department of public welfare, for the right to change custody and control is continuing in the court so long as the judgment is in effect, regardless of who has the actual physical custody and control of the child. Applying such basic principles to the instant situation, it appears that the court of a sending state which has paroled a delinquent juvenile or placed him on probation will stand in loco parentis to the child so that his legal settlement will continue within the jurisdiction of such court in such state.

In 1948 O. A. G., page 411, No. 66, where the problem was education of children living on land ceded to the federal government within this state, and charges therefor, it is said, in part, at pages 415 to 419:

“* * * I find no statutory authority for school officials of this State to furnish educational facilities for children nonresidents of the state even on their payment of full per capita cost of such education. While general transfer statutes exist for the transfer of pupils from one school corporation of this state to another, and an allocation of transfer expense incident thereto is set out in the various statutes, these do not
apply to non-residents of the state. The only statute along this line that I have found is one authorizing the transfer of Indiana high school students to the high schools of a foreign state, upon payment of certain tuition charges (Section 28-3702, Burns' 1948 Replacement). No provision is made for transfer of any pupils into this state from foreign jurisdictions. However, I believe no serious question could arise as a result of school officials of this state accepting such children residents of federal territory within the state, as such authority, in my opinion would be implied. The Legislature could not have consistently intended that Indiana pupils could be transferred to foreign jurisdictions for schooling without reciprocal rights being accorded such foreign jurisdictions under facts and circumstances fully warranting such action.

* * *

"* * * it is clear no authority is granted for making of a charge for the teaching of a child to a corporation receiving a nonresident pupil to make a charge based on the per capita cost of education less state tuition support, except where a child is legally transferred into such school corporation. As above pointed out, no such statute exists for a legal transfer from territory outside the state to a school corporation in this state, * * *

* * *

"Since the statute regulating the distribution of the State Tuition Fund only authorizes school corporations holding legal transfers for non-resident pupils to deduct the amount received from the State Tuition Fund in computing its charges; and since the rules of the Commission on General Education require either a legal transfer or full payment by the parent or guardian of a non-resident child before such child is considered transferred, no authority would be given Honey Creek Township School corporation to receive children of persons living in property on the Federal Penitentiary Reservation to educate such children except on payment of full per capita costs.” (Our emphasis)
It should be here noted that, subsequent to issuance of 1948 O. A. G., page 411, No. 66, supra, 1949 O. A. G., page 55, No. 12, modified the 1948 Opinion only in respect to the amount to be paid by parents of children transferred, saying at pages 56 and 57:

“In the administration of the statute regarding payment of state tuition support to schools, upon payment by a parent of the full per capita cost of educating a child, it has been the practice and administrative policy of permitting children to be counted in average daily attendance in the schools to which a child is transferred for school purposes. Under the above referred rules the action of parents paying full per capita costs for a child transferred to a school corporation would in itself constitute a transfer. This has resulted in school corporations receiving twice the amount of the tuition support payment, in the first instance from the parent and in the second instance on distribution by the state.

“I do not believe a reasonable construction of such rule can be made that would require the parent to pay full per capita costs including tuition support, but that a reasonable construction of said rule would be that the parent should pay the full per capita cost of educating the child in the school corporation educating such child, less the state tuition support. In such case the state tuition support would be payable to the school corporation actually educating such child on its furnishing the Superintendent of Public Instruction with evidence of the fact that the full per capita cost of educating such child had been paid, less the state tuition support.”

(Our emphasis)

The 1948 and 1949 Opinions quoted above both cited Rules 26 and 41 of the Commission on General Education of the State Department of Education as found in Indiana Rules and Regulations, 1947, Vol. 1, pages 762, 763 and 766, and the later, more “reasonable” construction has been adopted by the administrative agency since that time, though both rules have since been superseded by Rules A-4 and P-1, as found in the 1956 Additions and Revisions to Rules and Regulations, pages 132 and 156, which read in part as follows:
Rule A-4

"The average daily attendance of a nonresident pupil shall not be credited to the corporation that conducts the school attended unless the pupil has a legal transfer. A legal transfer is one issued through the proper local school officials or the Commission on General Education of the Indiana State Board of Education or by the local school corporation in case full payment has been made to it by the parent or guardian of the transferee." (Our emphasis)

Rule P-1

"The Commission on General Education of the Indiana State Board of Education authorizes recognition for state tuition-support of the average daily attendance of a pupil officially transferred to another public school corporation by the proper public school authority of the resident corporation; also, of the average daily attendance of a pupil in another public school corporation than that of residence, though not officially transferred thereto, if the attended school corporation submits at the request of the Statistical Division of the Indiana State Department of Public Instruction written evidence of the payment to the attended school corporation of the legal tuition charges of the attended corporation. * * *" (Our emphasis)

There is nothing in either revision which would indicate any change in policy from that expressed in earlier rules. Nor has the general transfer statute [Burns' 28-3701, supra] been changed since issuance of either the 1948 or 1949 Opinions above quoted.

Therefore, it is my opinion that the answer to your question is that a delinquent juvenile living in a foster home in the State of Indiana and being supervised by Indiana authorities is entitled to be educated in the public schools of this state and that transfer tuition charges of such education (being the per capita cost of such education less the amount of state tuition support) are payable by the parent or other person in loco parentis to such child. Presumably, all such delinquent juveniles would be wards of the courts having adjudicated their delinquency; therefore, subsequent removal of either the juve-
niles or their parents would not change their legal settlement from the jurisdiction of such court; however, the laws of the various states may differ materially as to which political subdivisions, if any, are responsible for defraying the cost of educating such juveniles.

Insofar as school enrollment may be considered a reformative or rehabilitative measure applied to juvenile probationers and/or parolees living and being supervised by authorities of a state where their parents or other persons in loco parentis are not resident, Articles I and X of the Compact would seem to authorize supplementary agreements in relation to such costs.

Article X of the Interstate Compact [Burns' 9-3601, supra] reads as follows:

"That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile
shall be secured prior to his being sent to another state; and (7) make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.”

In conclusion, we strongly recommend that the Compact administrator should utilize supplementary agreements to arrange for payment of necessary costs incidental to education in the public schools, as well as to foster home care, before agreeing to accept supervision of a delinquent juvenile probationer and/or parolee who may require public school education as a measure of rehabilitation. Such supplementary agreement should take into consideration the laws of the state wherein the delinquent juvenile has his legal settlement in ascertaining which administrative agency or political subdivision is liable for payment.

OFFICIAL OPINION NO. 9

January 18, 1962

Hon. Kenneth J. Brown, Jr.
State Senator, Delaware County
118 S. Mulberry Street
Muncie, Indiana

Dear Senator Brown:

This is in reply to your letter of December 7, 1961 in which you request an Official Opinion upon the following question.

“I am now desirous of securing your official opinion establishing the authority and corresponding responsibility, or the lack thereof, in the Board of County Commissioners of Delaware County insofar as the appointment and employment generally of the matron of the Delaware County Children’s Home is concerned.”

Your letter also presents the following factual information relative to your question:

“Pursuant to the Acts of 1897, Chapter 40, Section 1, Page 44, Burns’ Annotated Statutes, Sections 22-2601–22-2620 inclusive, the Board of County Commis-