Schools—Pupils—Trustees—Power.

The local school board of the district in which is located the House of Good Shepherds, Florence Crittenden Home or State Vocational School has authority to exclude from the public schools of the district girls committed to the said institutions.

George W. Padbury, Esq., October 19, 1929.
County Attorney,
Helena, Montana.

My Dear Mr. Padbury:

You have submitted for an opinion several questions relative to the right of children committed to various institutions located in Helena to attend the public schools of the district in which the institution is located.

You are advised that there is no provision of law whereby children committed either to the House of Good Shepherds, Florence Crittenden Home, or State Vocational School are required to attend the public schools of the district where these institutions are located. In fact the law contemplates that the children committed to these institutions shall be educated and trained in said institutions.

As to the State Vocational School, Section 12520 R.C.M. 1921 reads as follows:

> "Said school is to be for the care, education, training, and safekeeping of girls between the ages of eight and twenty-one years, who are legally committed thereto by a court of record."

In this connection see also State ex rel. Johnson vs. Kassing, 74 Mont. 25. As to the other two above mentioned institutions Section 12288 provides:

"* * * the court may order such child to be placed in the family of some suitable person where such family home shall be recommended by the probation officer of the court after consultation with those representing the interests of the child, there to remain until he or she shall have attained the age of twenty-one years or for any less time, or the court may order such child to be placed in the home where the county's dependent children are kept; or, if it appears to be for the best interest of the child, and such child appears to be in need of institutional training, the court may order him or her to be committed to some state institution, or some institution of learning managed by a corporation or individual, and devoted to the care of such children, for a definite or indefinite period, said institution to be situated in the State of Montana, and to be inspected at least once a year and approved by the bureau of child and animal protection and to receive for its services a per diem of thirty-five cents for each day that such child shall be in the custody, such per diem to be paid by the county sending the child, upon itemized vouchers duly certified to by the court, * * ."

It could hardly be said that the legislature intended that by the commitment of children to these institutions they should be taken out of the schools of their own districts to be educated in the public schools of another district when the law provides that they shall be committed to an institution which must provide institutional training and be an institution of learning.

No change in residence is made or attempted to be made by the involuntary transfer of a girl from any county of the state to any of the institutions mentioned. The county of residence is required to pay the expense as well as for the care and training and safe-keeping of the child. (See Sections 12288, 12537 R.C.M. 1921).

In Commonwealth vs. Board of Directors, 30 Atl. 507 the Supreme Court of Pennsylvania held that an inmate of a children's industrial association, a corporation whose purpose is "the care, support, education and spiritual guidance of poor and needy children" is not a resident of the place where the institution is situated so as to entitle the inmate to the school privileges of children in that district. (See also Commonwealth vs. Directors, 30 Atl. 509).

In Black vs. Graham, 86 Atl. 266, the Supreme Court of Pennsylvania held that dependent and incorrigible children committed to the care of different persons, who were residents of the school district and who are placed there by the county or some person legally responsible for the support of the particular children, were not legal residents of the school district of the persons with whom they lived, but were residents of the school district of their parents.

You are further advised that there is no provision of law authorizing the transfer of apportionment from the county or school district of which the child is a resident to the district in which the institution is

located. Neither is the district in which the institution is located entitled to include in its census enumeration any children committed to these institutions, whose residence is outside the district. (See State ex rel. Johnson vs. Kassing, supra.)

It is therefore my opinion that the school board of the district in which these institutions are located has authority to exclude from the public schools girls committed to the institutions above mentioned.

Very truly yours,

L. A. FOOT,
Attorney General.