

School Districts, Formation of School Census. "Census Children," Defined.

It is essential to the formation of a new school district that the petition for its creation contain the names of the parents or guardians of at least ten "census children." "Census children" are only such as have been enumerated and registered.

January 22nd, 1914.

Hon. T. F. Shea,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

I have your letter of the 17th instant, stating that:

"A question has arisen concerning the interpretation to be placed upon the words 'census children' as it is used in Sec. 404 of Chap. 4 of the Session Laws of the Thirteenth Assembly. This section states that for the purpose of organizing a new district a petition in writing shall be made to the county superintendent signed by the parents or guardians of at least ten census children between the ages of six years and twenty-one years. What interpretation is to be placed upon the term 'census children'?"

Under the provisions of the section of the statute to which you refer, when a proposed new district is to be organized:

"A petition in writing shall be made to the county superintendent, signed by the parents or guardians of at least ten 'census children between the ages of six and twenty-one years of age residing within the boundaries of the proposed new districts and residing at a greater distance than two miles

from any school house, which petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing within the boundaries of the proposed new district."

It appears to me by the portion of the section just quoted that the law recognizes two distinct classes of school children—for in the matter of the petition, it must be signed by the parents or guardians of "census children," while the petition itself must give the names "of all children of school age." It would seem from this that though one be a child of school age, its parents or guardian may not sign a petition for the organization of a new district unless it appears also that the child itself falls within the class denominated as "census children." In the same section it is further provided that no new district may be organized unless there shall be at least ten "census children" left in the remaining portion of the original district. Further, under the fourth paragraph of the section, the basis for the division of the school fund shall be the school population as shown by the last school census, before the division of the district or districts occurred. Paragraph 3 of Sec. 512 of the chapter provide for an annual school census, and this being true, I am led to believe that where the term "census children" is used in the section to which you refer, it means children who have been officially counted and whose names appear on the census. In the case of *State v. Sweeney*, 24 Nevada, 350, 55 Pacific, 88, a question of similar import arose, and the court in deciding the question said:

"We are of the opinion that the term 'census children' means the number of children officially registered. One of the definitions given by Webster of 'census' is: 'An official registration of the number of the people.'"

It follows, therefore, that parents or guardians are not qualified to sign a petition for the organization of a new school district unless they have children of school age whose names appear in the official school census, and who are at the time of the signing of the petition residing within the proposed new district at a greater distance than two miles from any school house.

Yours very truly,

D. M. KELLY,
Attorney General.