

School Districts—Census—Apportionment of School Funds.

1. Census reports of clerks of school districts may be amended by the clerk at any time prior to apportionment of school funds, as the facts may justify, and they may also be corrected by the county superintendent so as to correctly show the facts where error is apparent on the face of such returns or within the knowledge of the county superintendent.
2. Children should be enumerated by the clerk of the school district for the purpose of apportionment of school money by the

county superintendent in the district in which they actually reside rather than in the district in which they attend school.

Helena, Montana, Nov. 1, 1905.

Phil I. Cole, Esq., County Attorney, Chouteau, Montana.

Dear Sir:—I am in receipt of your request for an opinion from my office in relation to the census of school children for the purpose of apportionment of school funds.

You say that some school clerks have reported the names of children not residents of the district and not legally entitled to be included in such reports, and you ask:

First: Is there any way that these reports may be revised or amended so as to represent the correct number of children for which the school district is entitled to apportionment of school funds? and,

Second: Where children reside in one district and attend school in another, in which district should they be counted for the purpose of apportionment of school money?

1. In answer to your first inquiry, we are of opinion that it rests in the power of the clerk to make such corrections in his report, prior to the time the apportionment thereon is made by the county superintendent of schools, as the facts seem to justify; and if the county superintendent has knowledge that certain children included in the district clerk's census return are not legal residents of the district, or *vice versa*, and therefore should or should not have been included in the census return, it is within the power of the superintendent to correct such return by adding to it the names of children which should have been included or by striking therefrom the names of children not properly included. The county superintendent is controlled in making apportionment of the school fund, under the provisions of section 1737, Political Code, by the census returns made by the clerk of the district, pursuant to the provisions of division 3 of section 1830, Political Code, where there is no error apparent on the face of the return. The law requires "an exact census" of children "residing in the district," and, therefore, where error is apparent on the face of the returns, or to the certain knowledge of the county superintendent, it is within his province to rectify the same. (See school District No. 7 v. Patterson, 10 Mont. 17.)

2. In answer to your second question, we give you as our opinion that in the taking of the census of children for the purpose of apportionment of school money, as provided by division 3, section 1830, Political Code, children should be counted in the district in which their father or families actually reside, rather than the one in which they attend school. The language of the statute seems perfectly clear. It provides: "The district clerk shall * * * make annually, between the first and twentieth days of August in each year, an exact census of all children and youth between the ages of six and twenty-one years residing in the district," etc. The use of the words "residing in the district" clearly show the legislative intent on the subject.

Children should be enumerated for school census purposes in the dis-

tricts, respectively, where their fathers reside, or where they have their permanent home.

The conditions under which the attendance of children is permitted, in the public schools of districts of which they are not residents, is provided for by law, as is also the transfer of the amount of apportionment due on account of such children to the district, other than their residence, wherein they attend school.

(Section 1797, Political Code, as amended by chapter 26, laws 1903, p. 37; see also School District No. 7 v. Patterson, *supra*.)

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.