

Census, of School Children. Schools, Census of Children.

The census of school children prepared by clerks, and copies of which should be sent by superintendents to the Commissioner's Bureau, should contain the name, age, date of birth and sex of each child, and the names of both parents.

Helena, Montana, November 9, 1909.

Hon. J. H. Hall,

Commissioner, Bureau of Agricultural Labor and Industry,
Helena, Montana.

Dear Sir:

I am in receipt of your request for an opinion upon the following proposition: What data should the annual census reports prepared by the various school districts of the state, copies of which are to be sent by the county superintendent to your office, contain, and particularly what are the requirements of the law as to the names of the parents in such reports.

Section 1748, revised codes, provides that your office shall compile and preserve in your office from reports made by the county superintendents of schools "a full and complete list of the name, age, date of birth and sex of each child, and the name of the parents or guardians of each child under the age of sixteen years, who is now or hereafter may become a resident of this state, and such list shall be the official record of the age of children in this state."

Section 838, revised codes, makes it the duty of the county superintendents of schools to prepare and transmit to your office, within thirty days after they receive the school census from the various district clerks, a copy of such census "showing the name, sex, age and date of birth of each child under seventeen years of age, residing in the county, together with the names of the parents or guardian of such children." This section further provides that no county superintendent shall be paid his or her salary for the last month in his official year until he presents to the county commissioners the receipt of your office for a copy of such annual census report.

Section 846, revised codes, as amended by chapter 98, laws of 1909, provides that school districts which fail to make these annual reports to the county superintendent, "as provided by law, on or before October 15 of each year" shall not be entitled to receive any apportionment of any school monies."

Subdivision 3, of section 899, provides for the making of these annual reports by clerks of school districts, and says that they shall make an exact census of all the children between the ages of six and twenty-one years; and shall specify the name, sex, age and date of birth of such children, and the names of their parents or guardians.

It will be noticed that in all of the above laws that the census reports must contain the name, sex, age and date of birth of each child, and the names of their parents, and that in every instance the word "parents" is used in the plural. Therefore, such reports should contain the names of both parents, as well as the other data required to be inserted therein,

and if the names of both parents are not contained in such report it is not compiled "as provided by law," and it appears that in such event either the penalty imposed by said section 846, as amended, against the school district or the penalty imposed by said section 838 against the county superintendent of schools might be imposed.

The foregoing is undoubtedly the only construction that can be given to said sections. However, we understand that in the past the enforcement of this law was somewhat lax, and as the penalty imposed by said section 846, for a violation thereof, is very severe against the school district, it is doubtful whether the same should be invoked where there is any evidence to show that the clerk did not wilfully and knowingly refuse to comply with the law at the time of making the annual census in September. The time is past for the taking of the census for this year, and in many instances it would work considerable hardship to make out a new census. By another year proper instructions in conformity with this opinion could be furnished to all county superintendents, and then there would be no excuse or justification for them failing to make proper reports, and the penalties provided by law could then be enforced with justice and equity.

Yours very truly,

ALBERT J. GALEN,

Attorney General.