

**School Districts, Residence In. Homestead, Residence On.
Children, Where Enumerated. Residence, How Determined.**

Whether a person is residing within a certain school district is a question of fact and intention. Children are presumed to reside with their parents and should be enumerated where they reside. This must also be determined from the facts.

Rules for determining residence reviewed.

October 24, 1911.

Hon. W. E. Harmon,
State Superintendent of Public Instruction,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 23rd inst., submitting the following question:

"A man who lives in Missoula, and his family resides there in Missoula filed on a homestead on August 30th, and 24 hours after he took up his residence on the homestead, the school census was taken. He has declared his intention to live on his homestead. Should his children be enumerat-

ed on the census list in the city of Missoula or in the district where his homestead is situated?"

Under the provisions of Subdivision 3, Sec. 899, Revised Codes, the clerk of the district shall, annually, between the 1st and 20th days of September of each year, make an exact census of all the children between the ages of 6 and 21 years of age residing in the district. The residence of the parent entitled to the custody of the child is presumed to be the residence of the child, and such parent has the right to change the residence of the child unless otherwise restrained.

Sec. 3758, Revised Codes.

The question as to where the parent having custody of the child actually resides is a question of fact to be determined under the rules expressed in Sec. 32 of the Revised Codes. The mere fact that a man has made a filing on a homestead and has taken possession thereof, within the meaning of the homestead law, is not of itself conclusive evidence that his children reside on that homestead. The provision of said subdivision 3 of Sec. 899, is directed to the residence of the children, and if, in this case, the family were residing in Missoula and the father went elsewhere and made a filing on a homestead but did not remove his family thereto, his children are still residents of Missoula so long as they remain there. If, however, the father actually removed his family to the homestead, or was moving at the time stated in your letter, then their residence was on the homestead. This question of fact must be determined by the circumstances and under the rules as provided in said section 32, keeping in view the fact that it is the residence of the children, and also keeping in view that, under the policy of the law, the district where the children actually attend school is entitled to the "school moneys due and apportioned to such pupils." If it should be subsequently discovered that an error has been committed and the children listed in the wrong district, such error may be corrected under the provisions of Sec. 876, Revised Codes.

Very truly yours,

ALBERT J. GALEN,

Attorney General.