

School Funds, Distribution Of. Division of District, Distribution of Funds On. School Districts, Division Of. School Census, Time of Taking. School Children, When to Be Placed Upon Census.

Sec. 899, Revised Codes, as amended by Laws of 1911, requires the clerk of the school district to take census between Sept. 1st, and Oct., 15th each year. This does not limit the clerk to the taking of the census as of date of Aug. 31st each year. Upon the changing of territory from one district to another the children residing within the territory transferred should appear upon the census of the district to which they are transferred.

February 5, 1912.

Hon. Chas. A. Taylor,
County Attorney,
Billings, Mont.

Dear Sir:

I acknowledge receipt of your letter of the 20th ult., relative to the adjustment of school funds between School District No. 1 and School District No. 15 of your county. You refer to the opinion of this office under date of December 15, 1911, relative to the transfer of funds from District No. 1 to District No. 15, in which opinion we stated:

“With reference to the apportionment of state funds and with reference to the general levy made by the board of county commissioners these funds would necessarily be transferred to School District No. 15, in as much as the children residing in District No. 15 would necessarily appear upon the census of that district.”

You now call my attention to the fact that the transfer of this portion of District No. 1 to District No. 15 was made on September 24th, 1911, but that the school census is made as of August 31, 1911. This presents a condition very difficult to solve within the strict letter

of the provisions of our codes relative to the transfer of school funds upon the creation of a new district, or the transfer of territory from one district to another, but as a matter of administration it seems that the county superintendent of schools of your county will be able to adjust the matter satisfactory to the districts involved.

I note in the "census form" inclosed in your letter that the department of public instruction has directed that the children be listed upon the census as of date of August 31st. By reference to Sec. 899, Rev. Codes as amended by the Laws of 1911, the school district clerk is required to take annually between the first day of September and the 15th day of October of each year a census of the children residing within his district. This act does not require that the census be taken as of date of Aug. 31st, but the full time between Sept. 1st and Oct. 15th of each year is given the district clerk within which to list the children and youth residing in the district, and this necessarily means as of the date the census is taken by the clerk. As a matter of right and equity between Districts Nos. 1 and 15, I would suggest that the children appearing upon the census of District No. 1 known by the county superintendent to be residents of District No. 15 and whose names should in right appear upon the census list of District No. 15, be by her transferred from the census list of District No. 1, to that of District No. 15 and that the census would then appear as of the date of the transfer of the territory, to-wit: September 24th, 1911. This is the only solution of the controversy that I can suggest and in my opinion would be within the spirit if not the strict letter of the provisions of law relative thereto.

Very truly yours,

ALBERT J. GALEN,

Attorney General.