

School Children, Residence of. Residence of School Children. Legal Residence, of Parents. School Districts, Enumeration of Children in.

The place which a person selects or designates as his home, or where he votes or exercises the duty of a citizen, will be deemed his domicile or home.

The residence of the parents is the residence of the child.

If a temporary residence be maintained in a school district, solely for the purpose of securing to the children superior

advantages, such children should not be enumerated as residents of that school district. If the residence be maintained for other purposes, the children are to be deemed residents and should be enumerated in the school census.

November 15th, 1913.

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

Dear Sir:

Recently you wrote to this office requesting an opinion upon the following statement of facts:

"We have a number of instances in School District No. 1 of Powell County where the children are attending school in this district, but the father is spending a greater portion of his time upon his ranch situated in another district. In most of those instances the mother and children remain during the school year in School District No. 1 and at the close of the school year move back to the ranch and remain there during the vacation season. In one instance the father, although maintaining his home at the ranch, voted in School District No. 1 last spring, although at the time he was staying a greater portion of his time at his ranch home in another district. In another instance the father divides his time about equally between his city home in District No. 1 and his ranch home in another district. His family, including the mother, spend a greater part of the school year at their city home in District No. 1, but at the close of the school year in District No. 1 they move to their ranch in another district and attend the school at that place, and besides the father is a qualified director in the district in which his ranch is situated."

A somewhat analogous proposition was under consideration by this office, and an opinion rendered thereon (See Opinions Attorney General, 1910-12, p. 286), and the rule with reference to determining the residence of school children is there announced. However, since that opinion does not apparently settle the question of residence for school children where the parents apparently maintain two homes in different districts, we will add that it is uniformly held by the authorities that residence is a question of intention, which must manifest itself by the acts of the parties in reference thereto, and since one cannot be a resident of two distinct places at the same time, it follows that the rules with respect thereto, as laid down in the code, Revised Codes, 1907, Sec. 32, must be resorted to in determining the question of what constitutes actual residence, but the residence of a child need not necessarily be the residence of the parents, for Sec. 3758, Revised Codes, provides:

"A parent entitled to the custody of a child has the right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child."

Unless, therefore, the residence of the child be purposely changed by the father, if living, or by the mother, if the father be deceased, the residence of the parents is the resident of the child.

Sec. 32, *Supra*.

It is not essential to legal residence that the parents be permanently domiciled at one and at the same place, for a man may have, for purposes of business, established himself away from his legal residence for an indefinite period and be away from his family for such purposes, but this does not fix a new residence for him, nor change that of his family.

34 Cyc. 1648, Note.

As an aid in determining legal residence in addition to the rules laid down in the section of the code, *supra*, it is to be borne in mind that one's legal residence is usually the place where one exercises his political rights, such as the right to the elective franchise, and where he is liable to taxation.

34 Cyc. 1647, Note.

"A person may have two places of residence, as in the city and the country, and where a person has two residences at different seasons of the year, that will be deemed his domicile or home that he himself selects or designates as his home, or where he votes or exercises the duties of a citizen."

In re Newcomb, 192 N. Y. 238; 84 N. E. 950.

It is to be borne in mind that under our law the public schools of this state are open to all children between designated ages, and that school attendance is compulsory, and the purpose of legislation upon this question is to secure to every child between those ages the benefits of an elementary education.

"It is evident, therefore, that the language used in these connections is designedly used to recognize the mobility of school population or persons of school age; that it is the true intent and purpose of the law to throw open the doors of the public school to such persons wherever actually residing. Such has been the constant and uniform interpretation of the law by this department. Effort has been made to guard against the precipitancy of non-residents to points where superior advantages exist and schools of high order are maintained, by holding that such children only are entitled to free tuition as are actually residing in the district for other, as a main purpose, than to participate in the advantages which the school affords.

"This appears to be a just and equitable view to take, and one to which neither party should object. Under this view, children are enumerated where they actually live and have a home; the district receives the public money apportioned upon their account; the children have the benefits of attendance upon the public schools, and are without excuse if they fail to acquire a common school education. Any other

interpretation of the law would certainly result in debarring many from the privileges of the public schools, to maintain which all the taxable property of the state is laid under tribute.

"In the incidents of human life families are broken up and must be scattered by the necessities of obtaining a livelihood, by death of one or both parties, or by abandonment of offspring, as in this case. Such children, as all others, are the wards of the state to the extent of providing for their education to that degree that they can care for themselves and act the part of intelligent citizens. To secure these ends, laws relating to public schools must be interpreted to accord with this dominant, controlling spirit and purpose of their enactment, rather than in the narrower spirit of their possible relations to questions of pauperism and administration of estates."

State ex rel. School District No. v. Thayer, 74 Wis. 48.

I am of the opinion, therefore, that if temporary residence be maintained in School District No. 1 of Powell County, solely for the purpose of securing to these children superior advantages, that such children should not be enumerated as residents of that school district, but if the residence be maintained in such district for other purposes, and the sending of the children to school therein is merely an incident of such residence, then the children are to be deemed as residents of that district, and should be enumerated in the school census as such, irrespective of the fact that the father may have a domicile elsewhere.

Yours very truly,

D. M. KELLY,
Attorney General.