

Indians, Children of, When Right to Attend School. Children of Indians, Right of to Attend School. Public Schools, Right of Indian Children to Attend. Census of Children, Who Must Be Enumerated. District, Right of to Draw Public Money on Census Children.

The children of parents residing in a district where the father is a citizen and qualified voter, and the mother an Indian, are entitled to have their names placed on the census roll, and to attend the public schools, and the school district is entitled to draw public moneys on such children.

October 19, 1915.

Hon. H. W. Bunston,
County Attorney,
Hardin, Montana.

Dear Sir:

I am in receipt of your letter of the 16th instant, submitting the question:

"Are the children of parents, the father of whom is a citizen and qualified and registered voter, and the mother of whom is a breed Indian, entitled to have their names placed on the census roll, and is the school district in which they are residents entitled to secure the census money per head from these breed children, the same as other children?"

In your letter you refer to a question submitted to this office which is in substance, as to whether children under like circumstances are entitled to attend public schools, and refer to the fact that the answer received was in the affirmative. The opinion to which you refer was rendered to you on April 30, 1915, in affirmation of conclusions theretofore reached by you, a copy of which said opinion is here enclosed.

Subdivision 3 of Section 512, Chapter 76, Laws of 1913, gives full direction as to what children shall be enumerated in the school census, to-wit:

"An exact census of all the children and youth between the ages of six and twenty-one years residing in the district."

This language is broad enough to include all children without regard to blood or nationality. The only qualification that appears in this chapter is that found in Section 2003 of said chapter, quoted by you, relative to Indian children, and the Indian children excluded by this latter section are those who are not living under the guardianship of white persons, or whose parents are not citizens of the United States, or who have not taken land under the allotment and severalty act of Congress, and who have not severed their tribal relations. These exceptions would not include the children named in your letter. I know of no reason why the general principle of law that the political status of the wife follows that of her husband, would not apply to a man marrying an Indian girl the same as any other cases. Hence, unless these children are within the exception named in Section 2003, they may as a matter of right attend the public schools of the district where they bona fide reside; and it necessarily follows that if they may as a matter of right attend the schools, being residents of the district, that the district as a matter of right is entitled to draw its proportionate share of public moneys for such children, and that they should be enumerated in the school census taken by the clerk under the provisions of Subdivision 3, Section 512, Chapter 76, Laws of 1913.

This, we understand, is substantially the conclusion reached by you, and your opinion is, therefore affirmed.

Yours very truly,

J. B. POINDEXTER,

Attorney General.