

Census Children, Who Are. County Superintendent of Schools, Authority of. Schools, Authority of County Superintendent. Creation of New District, Authority of County Superintendent.

Married women under the age of twenty-one years are not to be considered as census children under the guardianship of their husbands in the formation of school districts. A county superintendent has no authority to create a school district with boundaries different than those described in the petition.

February 9, 1916.

Hon. J. S. Baker,
County Clerk,
Dillon, Montana.

Dear Sir:

I am in receipt of your communication submitting on behalf of the Board of County Commissioners, the two following questions:

1. "Are married women, under twenty-one years of age, considered census children, and if so, are the husbands to be considered their guardians under Section 404 of Chapter 76, 1913 Session Laws (Chapter IV School Laws)?"

2. "Has the County Superintendent of Schools authority to create a school district with boundaries different than described in the petition and notices for the hearing of said petition?"

The provisions of the school law relating to census children are found in paragraph 3 of Section 512 of Chapter 76, Laws of 1913. They are there designated as children and youth between the ages of six and twenty-one years. This provision seems to be in conflict with the provisions of Sections 3584 and 3586, Revised Codes of 1907, since by the terms of these sections, any female over the age of eighteen is an adult, and not a minor. She, therefore, could not be classed as a child or minor, even though she could correctly be spoken of as a youth. Whatever construction might be put upon the language of Section 404, Chapter 76, Laws of 1913, it is certain that a husband bears no relationship of guardian to his minor wife in the absence of proceeding to establish such relationship. There is nothing in the law relating to husband and wife creating the relationship of guardian and ward between them.

Section 3690, Revised Codes, et seq.

The theory of the law is that upon marriage, even a minor child is emancipated.

Section 3749, Revised Codes, 1907.

Your first question, therefore, may be answered in the negative.

Your second question has been previously considered by this office in an opinion to Hon. Robert C. Strong, County Attorney of Yellowstone County, found in Volume 5 of the Opinions of the Attorney

General, at page 402, where it was held that the petition required by Section 404, Chapter 76, Laws of 1913, is jurisdictional, and that no such authority is vested in the County Superintendent, or the Board of County Commissioners.

Yours very truly,

J. B. POINDEXTER,

Attorney General.