

**Census—Children—Clerk of School District—Schools—
School Census—Residence.**

The residence of all unmarried minor children is that of their father if he is living and they should be listed in the school census of the school district in which he resides, even though they may be absent from the district at the time the census is taken and enumerated.

Robert E. Purcell, Esq.,
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My dear Mr. Purcell:

You have submitted the question:

“In taking school census, in what district should children be enumerated, where during the month of September the mother and children move from their home in one district to another district, the father remaining at the home, said removal being for the purpose of having the children attend school in the district to which they have been removed?”

Section 1051, R. C. M. 1921, provides for the taking of school census by the Clerk of the district between the 1st day of September and the 1st day of October of each year. He must make an exact census of all the children and youths between the age of six and twenty-one years residing in the district. Among other things, he must give the name, age, sex and date of birth of each child, and the names of both parents, or guardians, together with the residence of said parents or guardians. In case families change residence from one district to another during September, children shall be listed in the district in which they will attend school.

The answer to your question involves the question of what is meant by “residing in the district,” and “change residence from one district to another.” In arriving at what is meant by these expressions Section 33, R. C. M. 1921, provides the rules to be followed.

“Every person has in law, a residence. In determining the place of residence the following rules are to be observed:

“1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

“2. There can only be one residence.

“3. A residence cannot be lost until another is gained.

“4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.

"5. The residence of the husband is presumptively the residence of the wife.

"6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

"7. The residence can be changed only by the union of act and intent." Sec. 33, R. C. M. 1921.

There can be no doubt of the residence of these school children when they and their mother were living at the home with the father and husband. They were then residing in the district where the father resided and had his home. This is settled by Subdivision 4 above. The question then follows as to what effect upon their residential status did their action in moving into the new district during September have? Under Subdivision 2 there can be but one residence and under No. 3 a residence cannot be lost until another is gained.

Therefore, unless their first residence has become lost, they could not be residents of the district to which they moved. The father has not changed his residence, therefore under Subdivision 4 above, neither have the children. Likewise under Subdivision 5 the presumption is that the wife is still a resident of the old district. Whether she actually is or not is immaterial, as under said Subdivision 4 the residence of the children is that of their father during his life. Under Subdivision 7 the father could only change his residence by doing some act relating to such change coupled with the intent to thereby change his residence, which evidently has not been done in this case.

It is, therefore, my opinion that these children are still residing in the district wherein their father has his residence. Likewise, it is my opinion that the family did not "change residence" during September. Ordinarily a family is considered to be constituted of father, mother and children. If the father had moved with the intention of making his new home his residence this act and intention would have changed the residence of the whole family unless the wife and mother established a residence of her own, but if she did her act could not have the effect of changing the residence of the minor children for the reasons hereinbefore stated. Their residence is that of the father during his lifetime.

It is, therefore, my opinion that these children should be listed in the district where the father has his residence.

You also inquire concerning that provision of said Section 1051, R. C. M. 1921, as follows:

"All children under twenty-one years of age who may be absent from home for any cause shall be included by the District Clerk in the census list of the city, town or district in which their parents reside."

and suggest that it is in contradiction with the preceding part of said section relating to listing the children in the district where they reside. I think what has been said heretofore will make the meaning of this provision clear. A child may reside in the district, and at the time of the taking of census not actually be living within it. It resides where it has its residence, which as above stated, in the case of unmarried minor children, is at the residence of the father during his lifetime. If they are living away from that residence at the time of taking census, no matter for what cause, they should be included the same as though they were living at their residence.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.