

Census Adjustments—School Funds—Distribution—Controversies—Superintendent of Public Instruction—Claims.

The state superintendent of public instruction has power to decide controversies over conflicting census claims.

A partial distribution of the general school fund may be made on the basis of the census returns not controverted. Controverted cases may be covered by a supplemental distribution.

April 11, 1928.

Miss Mina Petrashek,
Department of Public Instruction,
Helena, Montana.

My dear Miss Petrashek:

Your letter was received relative to the difficulties you are having in determining the correct census as between various counties of the state under chapter 118, laws of 1927.

It appears that in checking the census returns made under chapter 118 you have found many names listed from more than one county in the state. Section 4, chapter 118 requires the superintendent of public instruction to check for duplication, as between counties, the indexes of county census required to be submitted from the various counties.

If duplications are found the superintendent of public instruction is required to report them to the county superintendents in the counties where they occur, with instructions to each to ascertain the actual place of residence of the family and report findings. If the county superintendent fails to report within fifteen days this is an admission that the name has been improperly listed in that county and the state superintendent is authorized to remove it from that county list.

It further appears that controversies have arisen between county superintendents regarding the residence of certain pupils, and you wish to be advised how these controversies can be settled. There is no specific provision authorizing the state superintendent of public instruction to decide such controversies. It is my opinion, however, that this authority is necessarily implied and that in cases where the controversy cannot be amicably adjusted that the state superintendent will be compelled to decide, as between the two counties, the residence of the pupil involved.

To determine all of these controversies will take considerable time, and the common school fund cannot be distributed by the state treasurer, under the provisions of section 945 R. C. M. 1921, until the correct total census of the state has been determined and certified to him by the state superintendent of public instruction.

There is no reason, however, why the distribution of a portion of the general school fund should not be made upon the basis of that part of the census list over which there is no controversy. It will not be

difficult to determine the total number of census children in the state; the only difficulty is to determine to what county the name belongs.

Therefore, I suggest that you certify to the state treasurer the census list over which there is no controversy and that the state treasurer make a partial distribution, based upon this report, and that when the controverted cases are settled the remainder of the fund can be apportioned.

Very truly yours,

L. A. FOOT,
Attorney General.