

Opinion No. 22

SCHOOLS AND SCHOOL DISTRICTS; Census, defined—Sections 75-1802, 75-1903 and 75-2004, Revised Codes of Montana, 1947.

HELD: The term “school census”, as used in Section 75-1802, R.C.M., 1947, as last amended by Chapter 203, Laws of 1963, is the list of children between the ages of six and twenty-one as prepared by the school district clerk in conformity with Section 75-1903, R.C.M., 1947.

September 27, 1963

Miss Harriet Miller
State Superintendent of
Public Instruction
State Capitol
Helena, Montana

Dear Miss Miller:

You have requested my opinion as to the definition of “school

census" as used in Section 75-1802, R.C.M., 1947, as amended by Chapter 203, Laws of 1963.

Section 75-1802, R.C.M., 1947, as amended, makes it the duty of the County Superintendent of Schools to declare the class of a school district determined by the population residing within the district. For example, a school district having a population of 8,000 or more, shall be a first class district, and a district with a population of more than 1,000 and less than 8,000 shall be a second class district. Prior to the amendment of Section 75-1802, classification was determined on the basis of the federal census. This statute now provides that "the County Superintendent may compute the population by multiplying by three the number of school census children in the district." Because of this amendment, the materiality of "school census" is apparent.

It is the duty of the clerk of each school district to make a census under the provisions of Section 75-1903, R.C.M., 1947. The language used in this statute defining the duty is as follows:

"The clerk of the school district shall make annually between the 15th day of September and the 15th day of October of each year an exact census of all children and youths between the ages of six and twenty-one years residing in the district."

The clerk is required to perform another duty as this statute states, "He shall take specifically and separately a census of all children under the age of six years in the manner aforesaid." From the above it appears that the clerk will prepare two separate lists of children within the district.

The meaning of "school census" as used in Section 75-1802 must refer to that census of children between the ages of six and twenty-one, as it is this group with which the schools are concerned. Under Section 5 of Article XI, of the Montana Constitution, income from the permanent school funds shall be distributed to school districts in proportion to the number of children between the ages of six and twenty-one residing in the district. The right to attend school is granted in Section 75-2004, R.C.M., 1947, as follows:

"Every public school not otherwise provided for by law

shall be open to the admission of all children between the age of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided.”

The group of children between the ages of six and twenty-one years is that with which our schools are concerned, both by statute and constitutional provision, and it is reasonable to assume this is the true school census referred to in Section 75-1802, R.C.M., 1947, as amended. While a list of those children under the ages of six is helpful in determining future school attendance, yet it is not a census of those entitled to attend the public schools.

It is, therefore, my opinion that the term “school census”, as used in Section 75-1802, R.C.M., 1947, as last amended by Chapter 203, Laws of 1963, is the list of children between the ages of six and twenty-one as prepared by the school district clerk in conformity with Section 75-1903, R.C.M., 1947.

Very truly yours,
FORREST H. ANDERSON
Attorney General