

Opinion No. 39-3115

April 25, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mrs. Grace J. Corrigan, Superintendent of Public Instruction, Santa Fe, New Mexico.

{*40} In your letter of yesterday you inquire: "In taking the school census, in accordance with Senate Bill No. 63 passed by the 1939 Legislature, should there be included children who are not yet five years of age but who will be by the time school commences in the fall?"

In my opinion the answer to this question is that they should be included. Senate Bill No. 63 is Chapter 62 of the Laws of 1939 and amends Section 120-816, 1929 Compilation, which provided for a census to be made on or before August first.

Under this old law it was held by this office on December 18, 1936, Opinion No. 1493, that a person who lacked a few days of being 21 on August first should be included in the census, in other words, that the date stated in the act, that is, August first, should govern.

No significance was given to the fact that the census was required to be made "**on or before** August 1st." The act apparently was interpreted as requiring a census to be made as of August first. Under that act this interpretation was reasonable because the census was required to be made shortly prior to the beginning of the school year, and within the school year during which the school monies were to be distributed upon that enumeration.

The new act, however, requires that the census be taken on or before April 15 of each year, and the census so taken is to be used for the distribution of the school monies for the following fiscal year. This statute undoubtedly was enacted for the {*41} purpose of carrying into effect the constitutional provision in Article XII, Section 4, of the Constitution requiring distribution of the current school fund 'among' the school districts of the state in the proportion that the number of children of school age in each district bears to the total number of such children in the state."

Clearly the Constitution contemplates that the money for a particular year shall be distributed in accordance with the number of children of school age during that year. It does not define what school age is. The age used with respect to admission of school children, so I am informed by the Department of Education, is 5 to 21. In stating those ages as the ages to be used in the school census, the Legislature no doubt had in mind those ages as being "school ages."

If so, it is my opinion that the intent of the Legislature was to require a census of the children of school age for the following school year, and that the criterion for the taking of the census should be what children are between the ages of 5 and 21 **at the time when the school term begins**. They and none other constitute the children of school age.

I realize that this construction may not be exact, but I believe it is nearer to what the constitution requires with respect to the distribution of school monies, for which purpose the census is provided, and that the act should be construed with reference to the object sought to be accomplished.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.