

SCHOOLS: Persons under twenty years of age should be enumerated even though absent in the military or naval service of their country.

April 7, 1943



Mr. Harold S. Jones
Superintendent of Schools
Pemiscot County
Caruthersville, Missouri

Dear Sir:

We have your letter of April 2nd, in which you submit the following for our opinion:

"I need an opinion in the matter of School Enumeration. We take it from the 1st to 15th of May and include those from 6 years of age to 20. Should we take the names of those under 20 that are in the Service? I will appreciate your opinion of this point so that I can inform our schools."

Section 10345, R. S. Missouri, 1939, provides for the taking of enumeration lists, and reads in part as follows:

"The board of directors of each district shall, between the thirtieth day of April and the fifteenth day of May of each year take, or cause to be taken, and forwarded to the County Superintendent of Schools an enumeration of the names of all persons over six and under twenty years of age resident within the district, desig-

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nating male and female, white and colored, and age of each, together with the full name of the parent or guardian of each child enumerated;
* * * "

It will be seen that by the foregoing provision all children from six to twenty years of age who are resident within the district must be enumerated. We take it from your letter that the persons now in military service were residents of their respective districts at the time they entered the military service. The question, therefore, is whether or not a person loses his residence by reason of being absent in the military service of his country.

It has long been held in this state that residence is largely a matter of intention, and that such intention is to be deduced from the acts and utterances of the person whose residence is in issue. (In Re Lankford Estate, 272 Mo. 1.) A person can change his residence if he wants to, but entering the military or naval service of the country during a war would not indicate that the person was intending to change his residence. A person's residence is the place to which he intends to return when absent, and it is quite likely that all of the persons under twenty years of age who enter the armed forces of the country during war time intend to return home when the war is over. There is nothing in the enlistment of a person in the service of his country or being inducted into such service during a war which would indicate that such person was intentionally changing his residence.

Section 7 of Article VIII of the Constitution of Missouri reads as follows:

"For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service either civil, or military, of this state, or of the United States; nor while engaged in the navigation of the waters of the State,

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or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a poor-house or other asylum at public expense, nor while confined in public prison."

While the foregoing provision of the Constitution only deals with the effect which entering the military service has upon one's residence for voting purposes, yet we think it shows the policy of our law with respect to the effect which serving in the military forces of the government has upon residence. There is no reason to say that a person would not lose his residence so far as voting is concerned by serving in the military or naval forces, but that he would lose his residence so far as his right to free instruction in public schools is concerned. We do not believe that the status of a person as a citizen is affected in any way by his entering the armed forces of his country during the time of war.

CONCLUSION

It is, therefore, the opinion of this department that all persons from six to twenty years of age who are resident within a school district should be included in the enumeration lists, regardless of the fact that they may be temporarily away from said district in the military or naval service of their country.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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