

Therefore, you are advised that it is lawful for you to disclose to the Secretary of Revenue, or his duly authorized agent, such information in your possession respecting any institution as is necessary to assist him in the performance of his official duties.

Very truly yours,

DEPARTMENT OF JUSTICE,
HAROLD D. SAYLOR,
Deputy Attorney General.

OPINION NO. 13

School Districts—Computation of Population—Exclusion of Indigent Nonresident Inmates of State Institutions and Private Owned Schools for Deaf and Dumb Children Which Receive State Aid—Act of 1911, P. L. 309, Sections 102 to 107, construed.

For the purpose of computing the school district population as provided for by Sections 106-107 of the School Code, indigent nonresident inmates of tax supported institutions located in the district and nonresident pupils of a privately-owned school for deaf and dumb children which receives state aid to the full amount of cost and maintenance of such children, may be excluded.

Department of Justice,
Harrisburg, Pa., June 17, 1931.

Honorable James N. Rule, Superintendent of Public Instruction, Harrisburg, Pennsylvania.

Sir: We have your request to be advised upon the interpretation of Sections 102 to 107 of the Act of May 18, 1911, P. L. 309, and its amendments, in the application of the School Code to the following questions:

- (a) Should inmates of institutions for indigent poor, insane and tubercular persons be included as part of the population of a school district within which the institutions are located, for the purpose of classification of the district as provided in Section 102 of the Code?
- (b) Should the transient population of a privately-owned school for deaf and dumb children, which receives State aid to the full amount of the cost of tuition and maintenance, be included in the population of a school district within which it is located, for the purposes of classification?

In our opinion, and you are advised, if nonresidents of the district, they should not. The provision of this section does not appear to

have been passed upon by the Courts of this State. However, we base the conclusion here expressed on the following reasons:

The school districts of the State are classified upon the basis of population into four classes. Distinctions are made by law as to the administration of the districts of the several classes: for instance, the minimum salaries which shall be paid to teachers, supervisors, principals, and superintendents vary as to the class of the district; the percentage of salaries to be paid to the district by the Commonwealth for its teachers, supervisors, principals and all other members of the teaching and supervisory staff in the schools of any given district is determined by the class of the district; the number of the officers of the district and the functions to be performed by its officers, as well as the manner of their election or appointment, vary in districts of different classes. Therefore, the ascertainment of the class of the district has important consequences financial and otherwise.

For the purpose of such ascertainment, the School Code has provided, Sections 106-107, that, "the last United States census as set forth in the official report thereof shall be the basis on which the population of the several school districts shall be computed * * *," and "after the taking of each United States census, the Superintendent of Public Instruction shall canvass the same so far as it relates to the population of the several school districts in this Commonwealth, and * * * if it appear in any of said cases that the population of any school district in this Commonwealth by said census or said annexation, is such that it should be included in another class of school districts, the Superintendent of Public Instruction shall issue a certificate to said school district to that effect, and such school district shall, with the beginning of the next school year after said certificate has been issued, become a school district of the class to which it properly belongs."

In considering the intent and purpose of the language here quoted, we have examined the definitions given by standard dictionaries to the words "population", "basis", "compute", and "canvass", and find them defined as follows:

Population—the whole number of people in a place or a given territorial area; also, any specific portion of that number; as, the foreign population of New York.

Basis—the foundation of anything: that on which a thing stands or on which anything is reared; a foundation, groundwork, or supporting principle; the principal constituent of a compound; a fundamental ingredient.

Compute—to determine by calculation; count; reckon; calculate.

Canvass—to examine; to scrutinize; to sift or investigate by inquiry; examine as to opinions, desires, or intentions; apply to or address for the purpose of influencing action, or of ascertaining a probable result.

The last United States census, as set forth in the official report thereof, is the "basis" or foundation which the Superintendent of Public Instruction shall "canvass" or examine and upon which he shall "compute" or determine by calculation the population of the school district.

The decennial census does not of itself determine the class of the school district, but merely indicates a certain basis upon which the Superintendent of Public Instruction may compute the population and declare the classification.

An indigent person cannot gain a settlement outside the district of his domicile. In all other districts he is but a transient. In so far as he is an indigent resident, in a school district, having no domicile therein, he neither contributes to the school population of the district nor is he subject to property or per capita tax in support of its schools. He is not an elector within the district and is not eligible to office in the school system. The institution wherein he is housed is exempt from tax as a charitable institution or public building. An examination of the Constitution of Pennsylvania, Article VIII, Section 13, the various provisions of the School Code, and the general laws applicable to the school system indicates that for political, financial and administrative purposes, the school system is based upon taxables resident within the district.

The term "population" as used in Section 106 of the School Code, must be defined in the light of these and other provisions of the School Code and general laws affecting the administration of the school system.

Population is not to be reckoned by numbers only. As used in Section 106 of the School Code, it is, in our judgment, to be confined to those who are actual residents of the district. See *In Re Silkman*, 84 N. Y. 1025-38-42; 88 Appellate Division, 102.

It is our opinion that the Superintendent of Public Instruction, in canvassing the decennial census for Collier Township, Allegheny County, may exclude indigent nonresident inmates of a tax-supported institution located in the district. For this purpose he may ascertain the number of nonresident indigent inmates by affidavit of the superintendent or other officer having custody of the records of the inmates thereof. Having computed the population of the district, excluding such persons, he may issue a certificate accordingly. It is our opinion also that the pupils of a privately-owned school for deaf

and dumb children which receives State-aid to the full amount of cost and maintenance of such children, who are nonresidents of the district, may be determined by the Superintendent of Public Instruction, and having been determined, may be excluded in computing the population of the school district wherein the school is located.

Very truly yours,

DEPARTMENT OF JUSTICE,

S. M. R. O'HARA,

Deputy Attorney General.

OPINION NO. 14

Firearms—Possession of, by Foreign-born Resident—City Ordinance—Game Law Act of 1923, P. L. 359.

When a city or borough ordinance provides a penalty for violation on the same subject as that which has been regulated by statute, the statute is paramount, and the proceeding for violation under the ordinance must abate.

Department of Justice,
Harrisburg, Pa., July 13, 1931.

Board of Game Commissioners, Harrisburg, Pennsylvania.

Gentlemen: You ask to be advised whether the City of Pittston may recover a fine for violation of a city ordinance prohibiting an unnaturalized foreign-born resident within the city to own or be in possession of a shot-gun, rifle, pistol or other firearms. The ordinance to which you make reference was passed by the city council April 6, 1931. An examination of the ordinance will disclose that the four sections of which it is comprised, are almost verbatim reproductions of Sections 902, 903 and 904 of the Game Law Act of 1923, P. L. 359. The ordinance attaches precisely the same penalty provided by the statute.

The passage of such ordinance would be an attempt by the city to usurp the prerogatives of the Legislature in the imposition of a fine where the Legislature had previously occupied the entire field upon the subject of such violation. Does a municipality have such authority? Two laws should not run concurrently when each has attached to it a penalty for a violation—that is, no one should be twice punished for the same offense. Such conditions could arise only under a dual sovereignty, as for example our State and Federal Governments.