

Opinion No. 46-4961

October 30, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Benjamin D. Luchini Chairman-Executive Director Employment Security Commission Albuquerque, New Mexico

{*281} Reference is made to your letter of October 18, 1946, in which you set out the following facts:

Mr. "X" is a Navajo Indian, living on an Indian Reservation in New Mexico. By permit of the Navajo tribe, and the Superintendent of the Reservation, he is engaged as an individual in mining and selling coal on the reservation, for profit, paying wages to persons he employs in said operations. He has paid sufficient wages to become liable for contributions, beginning January 1, 1944, in accordance with the provisions of the New Mexico Unemployment Compensation Law.

Based upon those facts, you request the opinion of this office as to whether Mr. "X", the Indian, is liable for contributions imposed by the New Mexico Unemployment Compensation Law.

Section 2 of our Enabling Act provides, in part, as follows:

"Second, that the people inhabiting said proposed state do agree and declare * * * that they forever disclaim all right and title to * * * all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States, or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished, the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of Congress."

The Enabling Act has been incorporated in our Constitution by Article 21, Sections 1, 2 and 8.

Although the provisions of the Unemployment Compensation Act of New Mexico (See specifically Section 57-822 of the N.M. 1941 Compilation) are broad enough to include the type of operation which you have set out above, yet there is a question as to whether or not the State has jurisdiction to levy assessments against Mr. "X", the Indian, under the above circumstances.

The general rule is that Indians in territories set apart for their use are subject to the jurisdiction of the United States, and Congress has broad powers to deal with Indians and their property, which is paramount to the authority of the State, within whose limits the Indians may be. 42, C. J. S., Section 70, Page 775.

Conversely, in general a State has no power to interfere, by State regulations, with Indians who are wards of the Federal Government, and who reside on reservations. 42 C. J. S., Section 72, Page 783.

Our Supreme Court, in the case of Trujillo v. Prince, 42 N.M. 337, 78 P. 2d 145, summarized the principles discussed by law writers with reference to power of State and National Governments over Indians, as follows:

"(a) The power of Congress to regulate Indian affairs is granted exclusively to Congress so far as such affairs involve {*282} matters of national concern; (b) but the Constitution does not take away from the states their police power and legislation under that power may operate even with respect to matters of national concern if it does not conflict with the will of Congress; (c) the silence of Congress in respect to a matter of national concern is generally interpreted by the court as evidence of its will that the matter shall not be regulated by the states; (d) but Congress may break this silence and permit state police laws to operate even where they involve matters of national concern; (e) in matters of local concern the power of Congress is not exclusive; and (f) as to such matters, the silence of Congress discloses no objection to the operation of state laws. *

* **"

The Federal Government has passed legislation with reference to unemployment compensation matters (See Title 26, Sections 1600-1611, inclusive); and although the Federal law provides that no person shall be relieved from compliance with a State Unemployment Compensation law, on the ground that services are performed on land or premises owned, held or possessed by the Federal Government -- yet the law is silent with respect to Indians, and insofar as a State's jurisdiction is concerned, the law would appear to be applicable only to non-Indians, performing services on land owned, held or possessed by the Federal Government.

This is a very close question; and it is difficult to say just what decision a court might render if the question were presented to it. However in view of the particular facts in the case, and in view of the general rule, and of the legal principles, touching the power of the State and National Governments over Indians, I am of the opinion that a Navajo Indian living on an Indian Reservation in New Mexico and engaged in mining and selling coal on the reservation, is not liable for contributions imposed by the New Mexico Unemployment Compensation Law.

By WILLIAM R. FEDERICI,

Asst. Atty. General