

## Opinion No. 14-1311

September 2, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable T. B. Catron, United States Senate, Washington, D.C.

### **PUEBLO INDIAN LANDS.**

Taking up of cattle found on Pueblo Indian lands.

### **OPINION**

{\*168} I have seen a copy of a letter from the Commissioner of Indian Affairs, addressed to you under date of August 27, relative to the action of the Superintendent of the Santa Fe Indian School in taking up cattle found on Pueblo Indian lands and holding them until owners submit to the payment of one dollar per head therefor under Section 2117 of the Revised Statutes of the United States.

The Commissioner says that it is the opinion of his office that officers in charge of Indian reservations have authority, under Section 2125 of the Revised Statutes, to hold trespassing stock, and that it is customary for superintendents to give owners an opportunity to pay trespass fees without first referring the matter to the Department of Justice. I am unable to see how the Commissioner can reach any such opinion. Section 2125 provides that when goods or other property shall be seized for any violation of the Title, of which that section is a part, it is lawful to proceed against such goods or other property in the manner directed to be observed in the case of merchandise brought into the United States in violation of the {\*169} revenue laws. There is no necessary implication by that section which authorizes a superintendent of an Indian school to seize property for violation of the law, but if there were no provision in that Title, which treats of Indians, for the seizure of any property of any kind, the inference might perhaps be drawn that this section would justify the seizure of cattle. I find, however, in Section 2140, which is a part of the same title, distinct authority to superintendents and other officers to seize liquor which is about to be, or has been introduced into the Indian country. Moreover, Section 2124 provides that all penalties accruing under that title shall be sued for in an action of debt in the name of the United States.

The superintendent, who assesses a penalty, adjudicates the correctness of it and enforces payment, dispenses entirely with the necessity of any action of debt or other judicial proceeding, and combines in himself all the necessary judicial functions. Such condition is unjustifiable.

The Commissioner also says, in his letter to you, that it is believed that the laws relating to the Indian country are applicable to the Indian pueblos, and attention is invited to the case of United States v. Sandoval. All that was decided in the Sandoval case was that

the provision in the enabling act, which we were forced to copy into our constitution, prohibiting the introduction of liquors into the Indian country, which term congress declared should include all lands owned or occupied by the Pueblo Indians of New Mexico was a valid and rightful exercise of congressional power, but there is nothing in that direction which declares that all laws relating to Indians and Indian country are applicable to the Pueblo Indians or their lands, nor is there anything in the act of congress or our constitution which so declares. As far as the Pueblo Indians are concerned, the effect of the act of congress and of the constitution is merely to declare that, for the purposes of that act and of the constitution, all laws of the United States prohibiting the introduction of liquor into the Indian country shall be applicable. The attempt to expand this language so as to mean that all laws of the United States relating to Indians, on other subjects, shall apply to the Pueblos and their lands is most extraordinary to say the least. The act of congress and the constitution were treating only of the single subject of the introduction of liquor into the Indian country, and not a word can be found in either to indicate any intention to bring into operation, so far as the Pueblo Indians are concerned, the legislation of congress on other subjects.

It is true it is declared that lands of any Indian or Indian tribes, until the title thereto shall have been extinguished, shall remain subject to the disposition and under the absolute jurisdiction and control of the congress of the United States, but the language of that section is substantially the same as has been used with regard to Indians and Indian tribes in the admission of other states where no such Indians exist like the Pueblo Indians. To state it differently, congress, in the enabling act, has extended the prohibition as to the introduction of liquor into Indian country to the Pueblos and their lands, but has not attempted to do more than that with regard to them.

{\*170} Without militating against the force of the foregoing statement, it must be admitted that there is room for argument that the Indian lands which are to remain subject to the jurisdiction and control of congress include the Pueblo Indian lands because of the language referring to title having been "acquired through the United States, or any prior sovereignty." Even if this be conceded, there is nothing to indicate an intention to put in force, as to Pueblo Indians, all the laws of the United States theretofore enacted with regard to Indians of an entirely different class and kind. Congress has not yet attempted to exercise any jurisdiction over the Pueblo lands except to the extent of prohibiting the sale or introduction of liquor therein, and the greater part of congressional legislation as to Indians is entirely inapplicable to such people as the Pueblo Indians.