

Opinion No. 15-1452

March 2, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Alvan N. White, State Superintendent of Public Instruction, Santa Fe, New Mexico.

As to the establishment of a public school within an Indian reservation.

OPINION

{*41} I have your letter of the 25th ult. enclosing another from the County School Superintendent of Otero County, asking as to whether or not a public school district can be organized in an Indian Reservation, as to which you say that in view of the fact that the federal government is supposed to control such reservations, your first impression is that a public school district could not be so organized. The language of Section 2 of Article XXI of the Constitution is to the effect that all lands within the state owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through the United States or any prior sovereignty, until the Indian title shall have been extinguished, shall be and remain subject to the disposition and under the absolute jurisdiction and control of the congress of the United States. Just how far this goes in the direction of making it impossible for state authorities to exercise any power on an Indian Reservation, is not quite clear and there is pending in the United States district court a case which was submitted months ago, the decision of which may enlighten us.

As I recollect that case involved the question of the management of a community acequia in the lands of the San Juan Pueblo, the dispute being as to whether acequia officers should be elected as provided in the New Mexican statutes or not. The decision of that question might not, in any way, throw any light upon that which the county superintendent asks. My own opinion is that he would not have authority to establish a school district within an Indian Reservation or to collect any poll tax from persons living on such a reservation. The reservation being under the exclusive control of the United States, people who live there are not in a strict sense of the term, residents of the state, as the land embraced within the reservation is not, properly speaking, a part of the state. This has been distinctly held in a number of cases as to the status of persons living on military reservations acquired by the United States with the consent of the legislature of the state under the seventeenth paragraph of Section 8 of Article I of the Constitution of the United States.