

Opinion No. 15-1564

June 22, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Dr. Wm. P. Mills, Supt. New Mexico Insane Asylum, E. Las Vegas, N. M.

Pueblo Indian is citizen and entitled to free treatment at insane asylum.

OPINION

{*143} Your letter of the 28th of May was received on the 30th of that month and while my mind was quite clear on the subject of which you write, yet I thought it well not to attempt to answer you until {*144} I could re-examine the case of the United States vs. Sandoval to which you refer, which was decided by the Supreme Court of the United States on October 20, 1913. Upon going to the state library I found that the volume containing this decision was not on the shelves and although I made searches for it in different places throughout the building, I was never able to find it, and pressing current official matters pushed this one aside until today when I found the reported case in a different edition of the supreme court reports which must have been received very recently.

The matter of which you write is as to the legality of Mrs. Pedro Espinosa being confined in the asylum, she having been committed by Judge McFie as a county pay patient from the county of Taos, without consulting the then superintendent of the asylum or making any effort to have her committed as a pay patient, as you think that Judge McFie may have been remiss in not inquiring into the matter fully and having her committed as a government pay patient, she being a Pueblo Indian. You also say that you received a communication from Mr. P. Lonergan, Superintendent of the Pueblo Schools at Albuquerque, stating that he had submitted this question to me and that I had requested the records in the case and would give him an opinion as to her right to remain in the asylum. I have no recollection of receiving anything from Mr. Lonergan on this subject and as you say that he wrote to you on May 24th, it is possible that he may have made some application to this office while I was absent in the southern part of the state as I did not return until the 29th.

Briefly stated, what you desire to establish is that because the Supreme Court of the United States has decided that Pueblo Indians are wards of the government, Mrs. Espinosa, being a Pueblo Indian and a ward of the government, is not a citizen of the state and the government ought to pay for the care and attention given to her.

The decision referred to does not fully and absolutely establish in any unlimited sense of the term that the Pueblo Indians are wards of the government. The question involved in that case was as to the validity of legislation by congress in the act providing for the admission of New Mexico to statehood, prohibiting the introduction of intoxicating

liquors into the lands of the Pueblo Indians, and the court said that the question to be considered was "whether the status of the Pueblo Indians and their lands is such that congress competently can prohibit the introduction of intoxicating liquor into those lands, notwithstanding the admission of New Mexico to statehood." The court then gives considerable space to a discussion of the status of the Indians, making numerous quotations from reports of Indian agents and superintendents, and held that congress could so legislate. Mentioning the argument that such legislation could not be made to embrace the Pueblos because they are citizens, the court said that whether they are citizens or not is an open question and that the court need not determine it at that time because citizenship is in itself no obstacle to the exercise by congress of its power to enact laws for the benefit and protection of tribal Indians as a dependent people. In brief, the {*145} decision is that the Pueblos have been treated as dependent communities, entitled to the aid and protection of the government, and that this assertion of guardianship over them cannot be said to be arbitrary but must be regarded as both authorized and controlling. After all, the only question involved was as to whether the introduction of liquor into the Pueblo Indian lands was an offense for which Sandoval could be punished.

Although the supreme court declined to pass upon the question of whether the Pueblo Indians are citizens or not, because it was unnecessary to the decision of the case in the view of the court, yet I am convinced that they are citizens, the supreme court of the Territory of New Mexico having so held three or four different times. Under the Enabling Act and the Constitution the lands of these Indians are exempt from taxation, but I do not find that the exemption from taxation extends to any other property which they may have. I believe that the ordinary courts of the state have jurisdiction over the Indians the same as over other citizens but there is a contest over this question pending in the United States district court which has not yet reached a decision, that case arising upon the question of whether the laws of the state govern the operation and management of Indian community acequias. The attempt is being made by the subordinates of the office of Indian affairs to take complete control of the Indians in all their relations in life and to exclude the state from any such control, and as to this I do not believe there is any good foundation for their claim.

Holding these views, I am unable to see how I can advise that Mrs. Espinosa can be treated any differently as to her admission or continuance in the asylum from any other citizen who may be committed to your care.