

Opinion No. 15-1658

October 19, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Henry S. Whitehead, Clayton, New Mexico.

Exclusion from public schools of children belonging to the colored race.

OPINION

{*232} I have received your letter of the 16th inst. in which you inform me that your children are excluded from the public school because they belong to the colored race. There is no doubt that this is a gross violation of the rights of the children, and I have no doubt whatever that if proceedings are instituted in the courts, as you say you have decided to do, the court will undoubtedly compel the school board to receive your children unless they have some other reason for excluding them than on account of race. There is no way that the court or the district attorney can act unless some suit is filed. This is, however, such a matter of public interest that the district attorney could as a matter of official duty, and on behalf of the public, institute proceedings in court in your name to compel the school board to receive the children. As you indicate in your letter, it is not just that you should be compelled to bear the burden of necessary expense in connection with such a suit in order to obtain redress for the wrongful and lawless action of the school board. I will send a copy of this letter to Mr. Remley and another to Mr. Phillips for their consideration.

I think you are not justified in the feeling you express with regard to Judge Leib and Mr. Phillips. I have not the slightest doubt that Judge Leib will decide any case that may be brought, in accordance with the requirements of the law as he understands them, and I have no reason to believe that either Mr. Remley or Mr. Phillips desire to do anything except that which is right. You refer to the fact that gamblers have been sought out by the court and punished, but that is a somewhat different matter. Gambling is made a crime by law and the district attorney is charged with the duty of bringing offenders against the criminal law to trial in court, while the matter of which you complain is as to a violation of civil rights.

You must understand, however, that I have no power on account of my official position to compel the district attorney to do anything. Within his jurisdiction he is quite independent of the Attorney General.

In this part of the state I have never heard of any attempt to exclude colored children from the schools and I know that there are quite a number of them attending the schools in Santa Fe and in Albuquerque, and there appears to be no difficulty or friction of any kind in consequence of that fact.