

Opinion No. 15-1709

January 8, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. R. G. Marmon, Laguna, New Mexico.

Land held by a Pueblo Indian under patent from United States is taxable.

OPINION

{*280} I have just received your letter of the 7th inst. asking my opinion as to whether a Pueblo Indian who holds citizen patent for a quarter section of land and who runs his cattle, horses, etc., on the same and on public domain, is not subject to taxation the same as any other citizen of New Mexico.

The only exemption of the Indians from taxation is to be found in Section 2 of Article XXI of the constitution, which section is as follows:

"Sec. 2. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof, and 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 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 the Congress of the United States; that the lands and other property belonging to citizens of the United States residing without the state shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by this state upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein shall preclude this state from taxing, as other lands, and property are taxed, any lands and other property outside of an Indian reservation, owned or held by any Indian save and except such lands as have been granted or acquired as aforesaid, or as may be granted or confirmed to any Indian or Indians under any Act of Congress; but all such lands shall be exempt from taxation by this state so long and to such extent as the Congress of the United States has prescribed or may hereafter prescribe."

You will notice that the first part of this section contains a disclaimer by the state of all right and title to lands owned or held by any Indian, the right to which has been acquired through the United States or any prior sovereignty, and standing alone, this might be held to apply to land acquired by an Indian through a patent from the United States issued under the public land laws, although I do not think that this is at all clear; but further on in the section you will see that there is a provision that nothing therein shall preclude the state from taxing as other lands and property are taxed, any lands and

other property outside of an Indian reservation {*281} owned or held by any Indian, although this is qualified by the exception of lands granted or confirmed to any Indian under any act of congress. I feel certain that this last clause does not include lands acquired by a Pueblo Indian, the same as any other citizen might acquire lands under the general laws of the United States.

I am, therefore, of opinion that such land as you describe in your letter, held by an Indian under an ordinary patent from the United States is taxable the same as other lands. As to his personal property, there is no exemption from taxation to be found in the constitution, nor in the enabling act, under which we were admitted to statehood.