

Opinion No. [30-76]

October 31, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Hon. Atanasio Montoya, Sup't. of Public Instruction, Santa Fe, New Mexico.

SCHOOLS -- Indian children may attend.

OPINION

Reference is made to yours of the 28th inst. which was accompanied by copies of letters received by you from H. C. Hall, Superintendent of the Grants Union High School, and Eliseo Barela, President of the Union High School Board.

In these letters Mr. Hall and Mr. Barela ask for advice and opinion as to the permitting of Indian children to attend the high school, they not being tax payers and there being dissatisfaction expressed by tax payers who have to stand the expense of erecting and maintaining school buildings.

This office received a similar letter from Mr. Hall and in answer to that letter, we, yesterday, wrote Mr. Hall an opinion as follows:

"Reference is made to yours of the 28th inst. in re the right of Indian children to attend the public school.

I think your question is fully answered by section 1 of Article XII of the State Constitution which reads as follows:

'A uniform system of free public schools sufficient for the education of and open to all the children of school age in the state shall be established and maintained.'

This section appears to be comprehensive and unambiguous. The free public schools of the state are to be open to all children of school age in the state irrespective to race and without any requirement as to the holding of property or the payment of taxes."

To what we said to Mr. Hall we might add, for your information, that on October 23, 1916, the late Frank W. Clancy, then Attorney General rendered an opinion which is to be found as No. 1889 in the printed volume of opinions covering that time. In that opinion Mr. Clancy took the view that the Supreme Court of the Territory of New Mexico had several times declared that the Pueblo Indians were citizens of New Mexico and by virtue of the Treaty of 1848 became citizens of the United States; that they are to be considered subject to all state laws as all other citizens subject to the provisions of the Enabling Act and that the compulsory education law is applicable to Indian children the same as to those of other nationalities.

Mr. Barela seems to base an objection to the attendance of Indian children on the fact that the Indians do not pay taxes. This of course is no valid objection since by the provision of the constitution quoted to Mr. Hall it is apparent that no property qualification is required to entitle a child resident of the state to admission to our public schools. As a matter of fact there are many children in the public schools of this state whose fathers do not pay any taxes.

I am not sure from the statements contained in Mr. Barela's letter that all of these pupils are resident of the Union High School District though I assume from the letter of Mr. Hall written this office that they probably are. If they are residents of the district they must be permitted to attend the school if they desire as required in section 120-1201, Code of 1929. If they are not residents of the district the school board may admit them provided school accommodations are sufficient to provide for them but are not compelled to admit them. See section 120-1202, Codification of 1929.