

## Opinion No. 37-1580

April 1, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Hon. John D. Bingaman Commissioner of Revenue Santa Fe, New Mexico.  
Attention: Mr. R. B. Waggoman, Director, Emergency School Tax Division

{\*69} Your letter of March 31st requests an opinion upon the application of the severance tax to operations upon Indian reservations and you cite Title 25, Section 398, United States Code Annotated.

Under general rules of law the State would have no authority to impose a tax upon an Indian reservation unless there is some federal statute making an exception and unless the statute therefore, to which you make reference, makes an exception in this case the general rule will not apply and the severance tax could not be legally assessed against operations upon Indian reservations.

Section 398 of said Title 25 must be read in connection with Section 397. Section 397 provides that where lands are occupied by Indians who have bought and paid for the same and which are not needed for farming or agricultural purposes and are not desired for individual allotments the same may be leased by authority of the council speaking for such Indians for a period not to exceed five years for grazing, or ten years for mining purposes.

This is subject to certain regulation by the agent in charge of the reservation and is subject to the approval of the Secretary of the Interior.

Section 398 makes an extension of this leasing authority or power and provides that leases may be executed for oil and gas for a period of not to exceed ten years under certain regulation by the agent in charge and the Secretary of the Interior.

The section then provides that the production of oil and gas and other minerals **on such lands** may be taxed by the state in all respects the same as production on unrestricted lands.

It will be noted from the language used in the quoted sections that these provisions in connection with leasing only have application to leases of unallotted lands and lands which are occupied by Indians who have bought and paid for the same.

In other words, these provisions have no application to lands comprising Indian reservations unless such lands fall within the terms of these sections.

It is, therefore, my opinion that you have no right to levy the severance {*\*70*} tax against operations upon Indian reservations unless from a determination of the facts you find that such operations are upon lands as described in these two sections.