

Opinion No. 44-4596

October 5, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. Wilbur Jones, Engineer, Electrical Administrative Board, P. O. Box 386, Albuquerque, New Mexico

We are in receipt of your letter of September 27, 1944, in which you ask whether or not the Electrical Board has jurisdiction over Indian pueblos in administering the electrical code.

Section 2 of the Enabling Act provides in part:

"Second, that the people inhabiting said proposed state do agree and declare * * * that they forever disclaim all right and title 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 or from 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 Congress.**"

The Enabling Act became a part of our Constitution by Article 21, Sections 1, 2 and 8. This provision of the Enabling Act is consistent with the general rules governing jurisdiction of Indians. In the case of Trujillo vs. Prince, 42 N.M. 337, the Court said:

"(a) The power of Congress to regulate Indian affairs is granted exclusively to Congress so far as such affairs involve matters of national concern; (b) but the Constitution does not take away from the states their police power and legislation under that power may operate even with respect to matters of national concern if it does not conflict with the will of Congress; (c) the silence of Congress in respect to a matter of national concern is generally interpreted by the court as evidence of its will that the matter shall not be regulated by the states;"

While I do not find that Congress has directly legislated on the question of electrical installations, yet Congress has provided that persons trading with Indian tribes must be licensed and that the Indian agent shall make contracts for services and supplies.

In view of the foregoing, it is my opinion that the state has not acquired jurisdiction to regulate electrical installations within Indian pueblos.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General