

Opinion No. 52-5550

June 14, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Marshall S. Hester, Supt. New Mexico School for the Deaf Santa Fe, New Mexico

{*263} This is in reply to your letter of March 31, 1952, in which you request my opinion as to the construction to be given to the language of Section 55-2304, New Mexico Statutes Annotated, 1941 Compilation, wherein it requires the School for the Deaf to admit "Indian children under the control of U. S. Indian Agents" with provisions for the payment of tuition for such children being made prerequisite to such admittance. Your question was whether or not Indian children living on reservations were under the control of Indian Agents for the purposes of the statute, and whether Indian children living off the reservation were also under the control of Indian Agents.

The Federal statutes applicable to Governmental responsibility for Indian education seem the most appropriate guide we can select in determining which children are "under the control of Indian Agents." Any funds paid to the State for the education of Indian children must necessarily come from funds allotted to the payment of the costs of education of Indian children who are the responsibility of the Bureau of Indian Affairs and who come under {*264} the Indian Service Superintendent of Indian Education.

The language of Section 281, Title 25, U. S. C., (Sec. 1, 28 Stat. 311) gives us an indication of the extent to which the government, through the Indian Service, is obligated to educate all Indian children. The section reads:

"In the expenditure of money appropriated for any of the purposes of education of Indian children, those children of Indians who have taken or may take lands in severalty under any existing law shall not, by reason thereof, be excluded from the benefits of such appropriation."

It is my opinion that the foregoing statute must be determined to mean that all Indian children living on the reservations or on allotted lands are "under the control of Indian agents" insofar as the application of that language was intended by the wording of Section 55-2304, N.M.S.A., as to admission of Indian children into the School for the Deaf.