

Opinion No. 12-879

April 20, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. John E. Griffith, District Attorney, Socorro, New Mexico.

PUEBLO INDIANS.

Pueblo Indians are citizens of the United States.

OPINION

{*23} I have had on my desk for some time your letter on the subject of traders in Indian Pueblos paying occupation tax. I am not able to reach a satisfactory conclusion in my own mind on this subject. Were it not for a requirement contained in the Enabling Act which has been embodied in our Constitution, I would have no hesitancy in saying that such merchants are subject to payment of licenses, the same as any one else. The Pueblo Indians are citizens of the United States, the same as any other inhabitants of New Mexico, as has been decided three times by our Supreme Court, in the cases of U. S. v. Lucero, 1 N.M. 422; U. S. v. Santistevan, 1 N.M. 583; U. S. v. Joseph, 1 N.M. 593, and Territory v. Delinquent Tax Payers, 12 N.M. 141. I speak of these as three cases as the Santistevan and Joseph cases were practically one. The last decision was one which held that their lands were taxable, and Congress thereafter passed an act exempting their lands from taxation, as it had power to do while we were a territory. Under these decisions, even after their lands were exempted from taxation, there was nothing to differentiate their status before the law of the territory from that of any other class of citizens, except the exemption of the lands. When Congress passed the Enabling Act, however, it required us to put certain things in the Constitution, and among others the provisions to be found in Sections 1 and 2 of Article XXI of the Constitution. In Section 1 it {*24} is provided that the term "Indian Country" shall include all lands owned or occupied by the Pueblo Indians on June 20, 1910; and in Section 2 it is provided as to all lands owned or held by any Indian or Indian tribes, the title to which shall have been acquired through the United States "or any prior sovereignty," that such lands shall remain under the absolute jurisdiction and control of the United States. Now, the words "any prior sovereignty" in connection with Indian lands can refer to nothing but the lands of the Pueblo Indians, and it might be held that this clause operates to prevent the State authorities from doing anything whatever within such lands; but I am not at all clear as to how far this would go as to such matters as occupation taxes, as long as Congress has not legislated on the subject. Congress has legislated as to traders in the "Indian Country," and taking the two sections together it might be construed that these lands are Indian Country, and therefore within the language of the acts of Congress about non-intercourse with Indians and trading in the Indian country. It seems to me that it might be well to have a test case which could be taken into court and settled by judicial decision.