

Opinion No. 16-1889

October 23, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Linus L. Shields, Justice of the Peace, Jemez Springs, New Mexico.

Compulsory attendance, school law, as applied to Pueblo Indians.

OPINION

{*435} I have received your letter of the 20th instant in which you ask me to advise you whether Indians of the Jemez Pueblo may {*436} properly be tried by you for failure to send children to school, or whether such cases may be strictly federal cases.

The Supreme Court of New Mexico has several times declared that the Pueblo Indians were citizens of Mexico, and by virtue of the treaty of 1848 became citizens of the United States. I feel certain that they are to be considered as subject to all state laws the same as any other citizens, subject to the provisions in the Enabling Act, under which New Mexico was admitted to statehood. They differentiate the Pueblo Indians from other citizens to the extent of prohibiting the introduction of intoxicating liquors into the lands owned or occupied by them, and they also reserve jurisdiction or control of their lands to the Congress of the United States, and exempt the lands from taxation. You will see this by reference to Sections 1 and 2 of Article XXI of our Constitution. I am unable to see that the Indians themselves are not subject to the state laws, and, therefore, it is quite proper that they should be compelled to send their children to school the same as any one else.

Personally I know that Indians have been prosecuted for failing to send their children to school, but I do not know whether there have been such prosecutions since our admission to statehood. While I was district attorney more than once I had Indians brought into the district court, and my present recollection is that while we did not have any punishment inflicted upon them, it was only in consequence of their promises that they would obey the laws for the future.

I think that any person could make a complaint before a justice of the peace under Section 4961 of the Codification of 1915, against any person having control of children who fails or refuses to send them to school, under the conditions fixed in that section. A technical objection might be made, as you indicate in your letter, with regard to the Indians of the Jemez Pueblo because there is no public school within three miles of the Pueblo. By a somewhat strained construction of the statute it might be held that the school furnished by the government for the Pueblos is a public school. However that may be, I think you can properly receive the complaint which the local Indian Agent wishes to file and have the Indians brought in under a warrant, and the chances are

great that no such defense will be interposed, and it will be of value, I assume, to have the children go to school.

I suggest that if the Indians will promise amendment, that you could receive their pleas of guilty, as they will probably admit their guilt, and continue the cases without imposing sentence to see whether they will keep their promises. The Indian Agent will probably be able to pay the fees of your court as a part of his regular expenses, although possibly the Indians themselves may raise the money to pay such expenses.