

Opinion No. [30-86]

April 29, 1930

TO: Office of the Attorney General of New Mexico

SCHOOLS -- Tuition may be charged pupils non-resident of the state.

OPINION

Reference is made to yours of the 24th inst. in which you quoted a letter of the 23rd from Mrs. H. F. Brock, County Superintendent of Schools, Gallup, New Mexico. You ask for an opinion on the question submitted by Mrs. Brock who wishes to be advised in the matter of the attendance of Indian children in the public schools of McKinley County by arrangement with the Government and on a tuition basis.

We are not informed whether these Indian children are resident of this State or not. The provisions of the statutes to which we turn for authority in the matter of permitting the attendance of such children and the tuition, if any, to be charged are to be found in sections 120-2101 and following in the Compilation of 1929. From an examination of these sections we find that pupils **who are residents** of a district shall be permitted to attend school in the same. 120-1201. By the following section it is provided that governing authorities of schools may admit **non-resident** pupils to the schools under their charge **provided** such school accommodations are sufficient to provide for them. They also may determine the rate of tuition for pupils **non-resident of the state** and collect, but this tuition shall not be greater than the average cost per capita for education based on the average daily attendance of the district for the previous school term.

You will note that the only authority given for the charging of tuition is in the case of pupils non-resident of the State and the tuition in such case is to be not greater than the average cost per capita for education based on the average daily attendance of the preceding term. In our opinion the cost of education would include not only maintenance but the proportionate part of direct charges as well. If tuition is charged the Government on account of Indian children resident of this State, it would be based on the matter of contract between the government authorities and the governing authorities of the school district and not governed by statute. The right to collect such tuition might be questioned. The schools are not to be turned into commercial institutions. As to the disposition to be made of money received as tuition, we are of the opinion that it should be placed to the credit of the general fund of the district in which collected and expended after being budgeted as other general funds are expended, there being no authority for any expenditure, of course, outside of the budget.