

Opinion No. 35-875

January 28, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. George Cory, County Assessor, McKinley County, Gallup, New Mexico.

{*38} In reply to the question submitted in your letter of January 26th as to whether or not improvements belonging to Indian traders and situated on Indian reservations are subject to ad valorem tax by the State of New Mexico.

It is our opinion that personal property belonging to an Indian trader, but situated on an Indian reservation is subject to the general property tax of the State of New Mexico and of the county in which it is situated and should be rendered for taxation. The Constitution of New Mexico, Section 2 of Article XXI, disclaims on part of the State of New Mexico all the rights to lands lying within its boundaries owned or held by any Indian or Indian tribes where the title to the lands have been acquired through the United States or any prior sovereignty and further provides that said land shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.

This prohibition on the part of the state from levying any tax on Indian lands does not, in our opinion, apply to property owned by persons other than Indians themselves even though said property may be located upon an Indian reservation. The general rule as to this proposition as laid down in 31 C.J., page 545, Section 150, is:

"It is generally held that property of all persons within the limits of a reservation, except that of Indians, is subject to taxation by the state."

As to your further question regarding water-wells, wind-mills, etc., belonging to Indian traders but within the boundary of the Indian reservation, is more difficult to answer. Much would depend, in our opinion, upon the exact status of said improvements. If the improvements are of such a nature that they become a part of the land on which they are built and will be and remain the property of the Indians or Indian reservation upon the Indian trader's leaving said reservation, then, in our opinion, such improvements are not subject to a tax by the state or any of its sub-divisions. However, if the improvements placed upon the Indian lands by the trader may be removed by the trader when he leaves the reservation and the Indian tribes have no interest in the improvement, then, in our opinion, such property is subject to a tax.

By: J. R. MODRALL,

Assist. Attorney General