

School Districts on Indian Reservations. Trustee, Qualifications Of. Indian Recervations, School Districts On.

Part of an Indian Reservation may be included in a school district.

A person residing upon an Indian Reservation within such district who possesses the qualifications required by law may hold the office of school district trustee.

Helena, Montana, November 23, 1906.

Hon. W. E. Harmon, Superintendent of Public Instruction, Helena, Mont.

Dear Sir:—I am in receipt of your letter of November 5th in which you submit for the consideration of this two questions, to-wit:

1. "Can any part of an Indian Reservation be included in a school district?"

2. "Can a government trader residing on such part of an Indian Reservation hold the office of school trustee?"

It has been heretofore held by my predecessor, Attorney General Donovan, in a letter dated December 3, 1901, addressed to the Hon. W. W. Welch, Superintendent of Public Instruction, that a public school house may be located upon an Indian reservation with the consent of the federal authorities. It was also held by me in a letter addressed to Phil. I. Cole, County Attorney of Choteau County, March 17, 1905, that all white children residing upon reservations, and the children of Indians who have severed their tribal relations, are entitled to attend the district schools of the county, and that such children should be counted in the school census of the district in which they reside. The general law relating to Indian reservations is thus succinctly stated in 16 Am. & Eng. Enc. of Law, p. 222:

"Upon the admission of a state into the Union, or the organization of a territory, in the absence of treaty provisions to the contrary, the lands embraced thereby occupied by Indian tribes becomes a part of the state or territory so admitted or organized, and subject to its jurisdiction except so far as concerns the government and protection of the Indians themselves, and for purposes relating to the treaties and agreements between the United States and the Indians, in which respect the jurisdiction of the United States is conclusive."

It has been repeatedly held that property of persons, not Indians, situated upon a reservation is subject to assessment and taxation.

Cosier, et al., v. McMillan, 22 Mont. 484

Commissioners v. Railroad Co., 10 Mont. 414

Moore v. Beason (Wyo.), 51 Pac. 875

In the Cosier case above, it is held that the fact that an Indian Post Trader is licensed by the government to trade with the Indians does not exempt his stock in trade from state and county taxation, such trader being a mere licensee, and not an agent of the government

All Indian Reservations within the State of Montana, unless the treaty stipulations otherwise provide, are situate within and constitute a part of some county, and such reservations are a part of the county for all purposes except in so far as matters pertaining to the Indians are concerned. Hence it is apparent that a part of such reservation may be included within the boundaries of a school district.

2. Sec. 1777 of the Political Code, as amended by the laws of 1897, p. 138, provides that every citizen of the United States who has resided in the State of Montana one year and thirty days in the school district next preceding the election may vote thereat, and Sec. 1783 of the Political Code, as amended by the said Act of 1897 provides that any person, male or female, who is a qualified voter at any election under this act shall be eligible to the office of school trustee in such district. It therefore necessarily follows that any person, whether an Indian trader or not, who resides within a school district and who possesses the qualifications above named may hold the office of school district trustee.

Very truly yours,

ALBERT J. GALEN,

Attorney General.