

Indian Children, Not Entitled to Apportionment of School Moneys. School Census, Not to Include Names of Indian Children Unless Living Under Guardianship of White Persons. Vote, Indians Not Entitled to If Wards of the Government.

Indian children on the Flathead reservation are not entitled to the apportionment of school moneys unless they have severed their tribal relations; and the school census should not include the names of Indian children unless they are living under the guardianship of white persons.

Indians who have not severed their tribal relations are wards of the government and are not entitled to the election franchise of citizens.

Sept. 7, 1910.

J. H. Stevens, Esq.,
County Attorney,
Kalispell, Mont.

Dear Sir:—

I am in receipt of your letter of August 27th, asking for a supplemental opinion to the one addressed you on August 17th. I have given the question raised by you careful consideration and am still of the opinion that Section 996 of the Revised Codes of Montana does not contemplate including Indian children on the Flathead Reservation as entitled to apportionment of school moneys.

Section 6 of the Act of Congress of February 8th, 1887, bestows the rights of citizenship upon Indians born within the territorial limits of the United States who have, voluntarily taken up their residence separate and apart from their tribe, and who have adopted the habits of civilized life.

In the case of *United States vs. Boyd*, 83 Fed. Rep., 547, construing this particular section, it is held that the section does not apply to a tribe of Indians, as such, but is intended to cover the case of individual Indians who may avail themselves of the homestead laws of the United States. Section 5, of the same federal statute above referred to has been construed to the effect that neither the allotted land given to Indians, nor the permanent improvements or personal property thereon are subject to state or local taxation during the period of governmental trust.

See *U. S. vs. Rickert*, 188 U. S., 432, which case reverses a case decided two years before, and reported in 106 Fed. Rep., p 1.

It seems to me that as the financing of the public school system of this state is based upon taxation, that it must be the theory that the persons whose property is taxed should be the beneficiaries of the taxation. Flathead County does not receive any taxes from the owners of Indian lands on the Flathead Reservation, neither does the State of Montana.

In the case of *Elk vs. Wilkins*, 112 U. S. 106, it is held by the supreme court that the citizenship conferred by the Act of June 21st,

1902, is not citizenship within the full meaning of the 14th amendment to the constitution, and it further holds that similar acts should be so construed, which, I take it, would include the Act of February 8th, 1887 above referred to.

Sec. 2072, Revised Codes of the United States, provides for the education of Indian children, which enactment is at least an indication that the federal government does not depend upon a state to provide education for Indians, who have not severed their tribal relations. I take it that in determining this question we must give particular consideration to that portion of Section 996 regarding the separation of tribal relations. Even though Indians are, by law, under certain conditions made citizens of the United States, still it is necessary, under my construction of the statute last above referred to, that they have severed their tribal relation to become entitled to the apportionment of school moneys provided for by law.

You are therefore advised that in my opinion the school census to be taken between the 1st and 20th days of September of each year should not include the names of Indian children unless they are living under the guardianship of white persons.

Another opinion rendered heretofore, which is in conformity with the views herein expressed and which was not referred to in my last letter to you is found in opinions of the attorney general, 1906-8, p. 335.

The question appended in a postscript to your letter in regard to the possibility of the question arising of the right of Indians on Flathead Reservation to vote has been heretofore considered by this office and I believe sufficiently answered in an opinion addressed to the county attorney of Teton County on June 26, 1906, in which I gave it as my opinion that wards of the government are not entitled to vote, and as the Flathead Indians have not yet severed their tribal relations, I believe that they are still wards of the government and not entitled to the election franchise of citizens.

See Opinions Attorney General, 1905-06, p. 352.

Yours very truly,

ALBERT J. GALEN,
Attorney General