

Polling Precincts, on Indian Reservations. Precincts, Voting on Indian Reservations. Election Precincts, on Indian Reservations.

Where an Indian Reservation in compliance with an Act of Congress has been declared open to settlement by Presidential Proclamation, the Board of County Commissioners may establish polling precincts on that part of the Reservation within the County.

Oct. 13, 1910.

Gentlemen:—

Board of County Commissioners,
Thompson Falls, Mont.

Gentlemen:—

I am in receipt of a letter signed by Mr. C. H. Doenges, chairman of your board, dated October 11th, wherein you make inquiry as to whether or not voting precincts can be established on what was the Flathead Indian Reservation. The Act of April 23rd, 1904 provides for the survey of the Flathead Indian Reservation and the allotment of lands to persons having tribal relations which entitled them to allotments.

The President of the United States by proclamation dated May 22, 1909, proclaims that all non-mineral unreserved lands, classified as agricultural lands of the first class, agricultural lands of the second class, and grazing lands within the Flathead Indian Reservation, which have not been withdrawn shall be disposed of under the provisions of the homestead laws of the United States and be opened to settlement and entry in a certain manner prescribed in said proclamation. The proclamation also provides that none of the lands open to entry thereunder, shall become subject to settlement or entry prior to the first day of September, 1910, except in the manner prescribed in said proclamation.

While the government still exercises control and guardianship over the Indians to whom lands have been allotted, the Act of Congress, April 23, 1904, and supplemental Acts, together with the President's proclamation above referred to undoubtedly abrogate the Flathead Indian Reservation as such, and I do believe that the provisions of Section 499 of the Revised Codes, relate to the territory which was included in the Flathead Indian Reservation.

This office has rendered two opinions construing said Section 499, one of which, is reported in opinions of attorney general, 1905-06, at page 352, and addressed to Phil I. Cole, county attorney of Teton County. This opinion refers to a reservation which had not been opened for settlement and upon which no allotments had been made.

The last opinion was not given place as an official opinion of this department, but was included in a letter addressed to the Hon. Thos. H. Carter. In his letter of inquiry, he stated that the bill had passed both houses of Congress providing for the survey of the Fort Peck Indian Reservation and the allotment of lands to Indians residing thereon, but that no proclamation had yet been made, opening the unallotted por-

tion of the reservation to settlement under the land laws of the United States.

It was my opinion that the provisions of Section 499 were still in effect on the Fort Peck Indian Reservation, notwithstanding the passage of the acts providing for the survey and allotment of lands thereon, and would remain in effect on that reservation until the issuance of a proclamation by the President of the United States opening the unallotted lands to settlement.

I think, however, that as soon as a proclamation is issued throwing Indian Lands open to settlement under the land laws of the United States, that the reservation is extinguished and that there is no prohibition against the establishment of registration districts and polling precincts on what was an Indian Reserve. The department of the Interior has held in a matter arising out of the selection by the state of lands for the benefit of the public school system, that the reservation was opened on May 22, 1909, which is the date of the President's proclamation, while by the terms of the proclamation the land is not subject to settlement in any manner, other than that prescribed by the proclamation itself, until September 1st, 1910; and while it might be justifiable to hold that the reservation was not opened until the last named date, never-the-less, both dates are now in the past and there can be no question but that the Flathead Indian Reservation was extinguished, either upon May 22, 1909, or September 1st, 1910.

You are therefore advised, that in my opinion the Flathead Indian Reservation no longer exists and the board of county commissioners of Sanders County were acting with full authority and entirely within their jurisdiction when they established polling precincts upon what was the Flathead Indian Reservation.

Yours very truly,

ALBERT J. GALEN,

Attorney General.