

**Reservation, Lands on, Taxation Of. Allotments, of Indians,
Taxation Of. Indian Lands, Taxation Of. Taxation, of Lands
Patented to Indians. Trust, Land Held In.**

Question as to taxibility of lands patented to members of Indian tribe considered and discussed. See opinion.

June 8, 1911.

C. L. Crum, Esq.,
County Attorney,
Forsyth, Mont.

Dear Sir:

I am in receipt of your letter June 7th, 1911, wherein you ask my opinion as to whether certain lands on the Crow Reservation to which patents and fee simple have been issued to certain members of the Crow tribe, are properly subject to assessment and taxation. It is impossible for me to give you definite advice in the absence of specific information concerning each tract. In March, 1911, I addressed a letter to Hon. W. E. Harmon, superintendent of public instruction, in which I held in effect that where allotments in severalty had been made to members of an Indian tribe, and trust patents covering a certain period of years had been issued therefor, the allotments are not subject to taxation until the expiration of the trust period and the exchange of trust patents for patents in fee simple, had been made. This opinion was based in large measure upon the interpretation given to the Dawes act passed in 1887 by the supreme court in the cases of U. S. against Celestine, 215 U. S. 278, U. S. against Sutton 215 U. S. 291, in both of which cases, the court holds that the allotments are not subject to taxation until the reservation is extinguished, and the members of the tribe pass from the supervision of the Indian department.

In an opinion addressed to Charles L. Taylor, county Attorney of Yellowstone county, and rendered in April of this year, I held that lands allotted in fee simple to dead Indians, the title to which was afterwards acquired by a townsite company from heirs of such deceased Indians, is entirely free from the supervision of the Indian department, and subject to the jurisdiction of the state of Montana, and thereafter liable to taxation. My investigation of these questions discloses that upon the Crow Reservation, the conditions differ in different portions of the reservation. For instance, by act of Congress approved April 27th, 1904 (Section 1624, Vol. 33, Stat. at L) a certain portion of the Crow reservation was ceded to the United States government, which lands were afterwards opened to settlement by the government under the homestead townsite and mineral laws of the United States. This land is, of course, subject to taxation. Other parts of the Crow reservation have been allotted under the Dawes act, subject to a trust period of 25 years, and are not subject to taxation in my opinion, until the expiration of the trust period, and the extinguishment of the reservation. Lands allotted in fee simple without any restriction against alienation or other reservation, if there are any such, would, in my opinion be subject to the jurisdiction of this state and liable to taxation.

I trust that the foregoing will be of assistance to you in determining the questions which have been presented to you. I understand that the opinion rendered by me with reference to the jurisdiction of this state over the allotted lands on the Crow reservation situated at Hardin, being the opinion above referred to as addressed to Chas. L. Taylor, does not meet with the approval of the Indian bureau of the department of the interior, and I am informed that the United States district attorney for Montana is about to take such proceedings as will determine the question of jurisdiction. It is very probable that if these proceedings are instituted, we will be able to get a decision from a court of competent jurisdiction, which will set at rest, the apparently conflicting limits of state and federal jurisdiction.

Yours very truly,

ALBERT J. GALEN,

Attorney General.