Opinion No. 162.

Schools—School Districts—Indians —Reservations.

HELD: A school district, with boundaries coextensive with the boundaries of the Fort Belknap Indian Reservation, may be created providing that all of the necessary statutory requirements are fulfilled.

August 31, 1935.

Miss Elizabeth Ireland
State Superintendent of Public Instruction
The Capitol

You have submitted a letter from Norman B. Hinds, Education Field Agent at the Fort Belknap Indian Agency, Harlem, with a request for the opinion of this office as to whether or not a school district may be created with boundaries coextensive with the boundaries of the Fort Belknap Indian Reservation.

Upon the authority of Grant v. Michaels, 94 Mont. 452, 23 Pac. (2) 266, it is our opinion that such a district may be created, provided that all of the necessary statutory requirements are fulfilled. Since the decision in Grant v. Michaels, is controlling, we quote from it at length:

"**Dehors** the record, counsel for the commissioners have called our attention to the fact that the territory embraced within the proposed

district is within the Blackfoot Indian Reservation, and that most of the persons interested are Indian wards of the government, and asserts that these are not taxpayers. Counsel asserts that we should take judicial notice of these facts, and further, that within such territory there is a large parochial boarding-school, and a large government boarding-school, which schools take care of and board several hundred Indian children, and that each year the Congress finds it necessary to appropriate large sums for the relief, food, clothing, housing and medical care of these people. It is further urged that to create separate schools within the new district in order that none of the 212 children would have to travel more than 4 miles to school 'would be to create an impossible tax condition upon the taxable property in that district.' * * *

"That many of the children of the proposed district are the offspring of illiterate Indians is all the more reason why they should be afforded adequate free public school facilities; their parents cannot instruct them at home, and, while a truant officer is authorized to return truants to a parochial or government school, which they have been attending, the parents of such children cannot be compelled to place their children in such schools or return them thereto if the children leave with their consent.

"The government, recognizing the necessity of educating the Indians, has made provision for and established Indian schools, but neither by treaty have the Blackfoot Indians surrendered to the United States the right to compel their children to attend school (if it may be assumed that Indians exercise such authority over their children), nor has the United States assumed to possess or exercise such right. (United States ex rel. Young v. Imoda, 4 Mont. 38, 1 Pac. 721.) The government boarding-school mentioned does not fill the place of the free common school required by our Constitution, and the fact, if it be a fact, that such a school is open to the children of the proposed district, does not relieve the state of its duty to furnish public school facilities to those children. Even though a government school existed within the territory under consideration, that fact would be immaterial in considering the petition for a district. (Piper v. Big Pine School Dist., supra.)"

See also Lebo v. Griffith, 42 S. D. 198, 173 N. W. 840; State v. Mountrail County, 28 N. D. 389, 149 N. W. 120; Section 1204, R. C. M. 1921; Volume 1, Report and Official Opinions of Attorney General, page 411; Volume 11, page 50.