

Opinion No. 51.

Indians — Old Age Pensions — Relief.

HELD: Indians holding or owning patented land, as well as those holding unpatented land, are equally entitled to old age pensions, and to relief.

March 1, 1937.

Tribal Council of the Fort Belknap
Indian Reservation
Harlem, Montana
Attention: Ruth Creswell, Secretary
Gentlemen:

You requested an opinion from this office as to whether or not unpatented Indians, or ward Indians, as well as patented Indians, can participate in the benefits available to citizens of this state under the Old Age Pension Law, and, secondly, whether or not these same Indians may receive assistance from the Montana Relief Commission.

Chapter 170 of the Twenty-fourth Legislative Assembly authorizes and establishes the law under which the old age pension system operates. Section 3 of this Act prescribes certain requirements to make eligible persons receiving old age assistance, and prescribes a number of requirements, among these requirements, subdivisions 2, 3 and 6 must be considered in determining these questions, Sub-2 of Section 3 provides:

"(2) Has income which, when added to the contributions in money, substance or service from legally responsible relatives or others, is inadequate to provide a reasonable subsistence compatible with decency and health."

The Old Age Commission, in determining what allowance or sum the Indian should receive, must take into consideration any sum, or material assistance, such as food and clothing, received by the Indian from the United States Government, in the same manner as this commission would determine the sum to be paid if the applicant were a white person. Under all cases it is the duty of the commission to determine what income or contributions the applicant has received, and deduct those contributions from the amount the applicant would receive otherwise. The mere fact that the applicant is an Indian, unpatented or patented, is no reason why he should be disqualified from receiving the benefits this Act, and the amount that he will receive should be computed in the same manner as that of any other applicant, taking into consideration the sums that he may have received

from the United States Government. The Indian shall not be discriminated against simply because of the fact that he is a ward of the Government, but he is entitled to receive the same equal benefits as any other person. Section 3 requires that the benefits of the old age pension shall accrue only to a citizen of the United States.

Under the Dawes Act, or an act known as the Dawes Act, being an Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes, it is provided that, upon the patenting of the lands to the Indians, these Indians would have the benefit of, and be subject to, the laws, both civil and criminal, of the state or territory in which they may reside. This Act was subsequently amended, and by a further Act of Congress, approved June 2, 1924, Congress declared "that all noncitizen Indians be, and they are hereby, declared to be citizens of the United States."

State v. Big Sheep, 75 Mont. 219,
230.

So therefore, Congress having declared not only patented Indians but unpatented Indians to be citizens of the United States Government, it necessarily follows that the Indian applicant, whether patented or unpatented, has complied with subdivision 3 of Section 3, Chapter 170. Subdivision 6 of Section 3, Chapter 170, prohibits the Old Age Commission from allowing benefits to an inmate of any public or private institution, except in the case of temporary medical or surgical care in a hospital. It has been urged that by reason of the fact that the unpatented Indian was a ward of the Federal Government and that the Government occupied the position of guardian to said Indian, that such situation brought the Indian within the sphere of being an inmate of a public institution. However, I cannot subscribe to such a contention. Subdivision 6 has reference to persons who are confined in institutions such as the asylum, penitentiary, tuberculosis hospital, reform schools and such other physical existing state or federal institutions, and to hold that because the Indian was a ward of the

Government, he was an inmate of a public institution, would be to unreasonably constrain the language of subdivision 6 and read into that section an unreasonable interpretation.

As to the question of whether or not a patented Indian would be excluded from the benefits of the Old Age Pension Act, I refer you to the following language used in the case of *State v. Big Sheep*, supra:

"On the other hand it is clear that an Indian who has obtained patent in fee to his allotment not only is a citizen of the United States, but has all the rights, privileges and immunities of citizens of the United States, and is subject to the civil and criminal laws of the state of Montana. He is no longer a ward of the government." (p. 230)

As to whether or not a patented Indian is entitled to relief from the Montana Relief Commission, has been practically answered in the affirmative by my answer to your first question, as the same general principles of law apply. Chapter 20 of the Extraordinary Session Laws of 1933-34 makes it the duty of the Montana Relief Commission to administer the Emergency Relief Fund, "in such manner as to effectuate the purpose of this act as herein set forth." Sec. 1 of the Act provides:

"There is hereby created a state institution to be known as Emergency Relief, the purpose of which shall be to provide means for the sustenance of life and the relief of distress among people of the state whom economic conditions, industrial inactivity, or other cause over which they have no control, has deprived of support."

No doubt there is at least a moral obligation on the part of the Federal Government to take care of its ward Indians, yet the history of the Government's treatment of the Indians shows that it has not always fulfilled such obligations, and the Government, being the sovereign, cannot be compelled to perform those obligations. In other words, the effect of the policy of the Government has been to partially abandon these Indians, and in many cases in this state, the Government has not provided sufficient sup-

port and adequate means to keep the Indians from being destitute. However, in determining whether or not the Relief Commission shall aid these destitute wards, the commission should take into consideration any annuities or other support the Federal Government extends to them, but the commission should not deprive the wards of, nor exclude them from, relief simply because of the fact that they are wards, and in arriving at whether or not they are entitled to relief, it should consider Indians and the government aid without discrimination, and in the same manner that it would arrive at determining what aid should be given to any of its other citizens, taking into consideration what assistance those citizens may also be receiving from other sources or from relatives.

Therefore, it is my opinion that ward or unpatented Indians, as well as patented Indians, shall not be excluded from the benefits of old age pensions and other relief provided by the State of Montana, and that no discrimination shall be made against these people by virtue of their relationship with the Federal Government, and that in determining the amount of pension or relief that they shall receive, the Old Age Pension Commission and Relief Agencies shall take into consideration and deduct therefrom whatever allowances are actually being made by the Federal Government to them.