No. 127

SCHOOL—INDIANS

Held: The State is without jurisdiction or authority to compel an Indian residing upon his Indian allotment within the boundaries of the Crow Indian Reservation to send his child or ward to the public school.

May 27, 1941.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted the following:

> "In the event a parent or guardian of an Indian child between the age of 8 and 16 years resides upon his Indian allotment within the boundaries of the Crow Indian Reservation and refuses to require his children or wards to attend the public schools established by the various school districts therein, does the state have jurisdiction to prosecute the parent or guardian for the failure of the Indian parent or guardian to require said child or ward to attend the schools as required by Section 1139 of the Revised Codes of Montana, 1935?"

Under the provisions of Section 1808, Revised Codes of Montana, 1935, the Crow Indian children residing in the State of Montana shall be hereafter **permitted** to attend the public schools of the State of Montana on the same conditions as the children of white citizens of the said state. Practically the same provisions appear in Section 1806, Revised Codes of Montana, 1935.

I am unable to find any provisions under the law whereby a parent or guardian of an Indian child between the age of 8 and 16 years residing upon his Indian allotment within the boundaries of the Crow Indian Reservation can be compelled to send his child or ward to school.

In the case of Grant et al. v. Michaels et al., 94 Mont. 452, 465, 23 Pac. (2nd) 266, our Supreme Court, among other things, said:

> "That many of the children of the proposed districts 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 said 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 provisions 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 is the United States assumed to possess or exercise such right. (United States ex rel. Young vs. 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 vs. Big Pine School District, supra)."

In the case of U. S. ex rel. Young, petitioner in habeas corpus, v. Imoda, 4 Mont. 38, the Court held:

"Neither by treaty or statute have the Indians surrendered to the United States the right to compel their children to attend school, nor has the United States assumed to possess or exercise such right. If the Indians fail in their treaty engagements in this respect, neither treaty or statute provide a penalty, nor does the right of compulsion pass to the United States or its agents. It must be exercised by the parents of such children or the tribe to which they belong."

The two cases above cited disclose the United States is without authority to compel the Indian child to attend the public schools within a district located upon the reservation—and certainly the State has no right to enforce attendance, as the question of jurisdiction would preclude or estop it from so doing. This contention is borne out by State v. Phelps, 93 Mont. 277, 19 Pac. (2nd) 319, wherein the court, among other things, said:

"It is clearly shown, on consideration of the above applicable laws, that the defendant is an enrolled member of the Crow Indian tribe, has resided on the reservation all of his life, and has been recognized by the tribe and by the government authorities as of the Indian race and granted annuities and the allotment of Indian lands, and is therefore in fact an 'Indian,' and that, as an 'allottee,' he is subject to the exclusive jurisdiction of the United States until the issuance of a fee-simple patent for his land."

An Indian who has obtained patent in fee to his allotment not only is a citizen of the United States, but has all 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. His allotment is free from government restraint and control. The sovereignty of the State of Montana over the patented Indian has been conceded by the Federal Government (State v. Big Sheep, 75 Mont. 219, 230, 243 Pac. 1067). But, as stated in State vs. Phelps, supra, the Federal Government has exclusive jurisdiction over the Indian allottee, living on non-patented land and residing on the Indian reservation.

Therefore, it is my opinion the State is without jurisdiction or authority to compel an Indian residing upon his Indian allotment within the boundaries of the Crow Indian Reservation to send his child or ward to the public schools.

Sincerely yours,

JOHN W. BONNER
Attorney General