

No. 339

**SCHOOLS—FEDERAL GOVERNMENT—INDIAN
SCHOOLS—PUBLIC SCHOOL MONEY—APPOR-
TIONMENT—TRANSFER OF SCHOOL MONEY**

Held: No public school money from any source may be appropriated, given or transferred by the state or any county, school district, board or person to any Indian school which is maintained and supervised by or is under the jurisdiction of the federal government. Public school funds, no matter from what source derived, may not be used for any school or educational purpose except the public schools and institutions which are under the exclusive jurisdiction and absolute control of the State of Montana.

January 9, 1942.

Miss Elizabeth Ireland
State Superintendent of Public Instruction
Capitol Building
Helena, Montana

Dear Miss Ireland:

You have submitted the following:

“Will you kindly give an opinion on the question as to whether or not a school district which maintains a public school, or schools can transfer state apportionment, county apportionment, or pay tuition for a full-blood Indian child, a half-blood Indian child, a one-fourth-blood Indian child, or white Indian child, to an Indian school which is maintained and supervised and under the direction of the Federal government?”

In answering your inquiry it should be remembered our State Constitution provides for a free, public, common school system (State Constitution, Article XI, Sections 1 to 12 inclusive) and our statutes cover every phase of such system.

The system of our free, public, common schools extends to every child within the borders of the State of Montana between the ages of six and twenty-one years, regardless of race, color or creed, the opportunity of attending a free school, both elementary and secondary.

The free, public, common school system of the State of Montana is inclusive and exclusive of all other facilities of education as far as the State of Montana is concerned.

The free, public, common school system of the State of Montana was provided for in the Enabling Act, Sections 10 and 11, 25 Statutes at Large 676, and further provided for in Sections 1 to 12 of Article XI of our State Constitution.

Section 35 of Article V of our State Constitution provides:

“No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or secretarian institution or association.” (Emphasis mine.)

Section 1 of Article XIII of our State Constitution provides:

“Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.”

It is apparent any donation, gift, bonus or any other school moneys of the state, county or school district, transferred to an Indian school which is maintained, supervised and under the direction of the federal government would immediately pass from the control of the State of Montana. Such a transaction is expressly prohibited by our State Constitution.

The people of Montana are very jealous of their free, common public school systems. The funds derived from all federal grants, from gifts, grants and from all other sources making up the public school funds are held sacred and inviolate by the terms of our State Constitution.

There is no authority for, but a constitutional restriction against, the legislature's appropriating any public funds for the support or assistance of an Indian school which is under the exclusive jurisdiction, control and supervision of the federal government. Much less, then, may the State Board of Education, the State Superintendent of Public Instruction, the County Superintendent of Public Instruction, the County Superintendent of Schools, boards of county commissioners or boards of school trustees make any such contribution of public school funds.

The commands of our State Constitution and the statutes of our state make ample provision for a free, public school available to every child in the State of Montana between the age of six and twenty-one years.

It is therefore my opinion that, under our State Constitution and the statutes of Montana, no public school money from any source may be appropriated, given or transferred by the state or any county, school district, board or person to any Indian school which is maintained and supervised by or is under the jurisdiction of the federal government.

It is my further opinion no public school funds, no matter from what source derived, may be used for any school or educational purpose except the public schools and institutions which are under the exclusive jurisdiction and absolute control of the State of Montana.

Sincerely yours,

JOHN W. BONNER
Attorney General