APPLICABILITY OF THE SOCIAL SECURITY ACT TO THE INDIANS

Memorandum *April 22, 1936.*

The Social Security Act (49 Stat. 620), approved August 14, 1935, provides Federal assistance to the States, including Alaska (Section 1101 (a) (1)), to enable them to improve the welfare and security of their inhabitants, and establishes a Federal system of old age benefits for industrial employees. The act contemplates that with Federal assistance the States will give direct aid to three classes of individuals: "aged needy individuals" (Title I); "needy dependent children" (Title IV); and "needy individuals who are blind" (Title X). The Act also provides Federal financial assistance in improving certain specific State social services: maternal and child health services, especially in rural and stricken areas; services for crippled children; child welfare services; vocational rehabilitation (Title V); and public health services (Title VI). Finally, the act authorizes Federal financial assistance in the administration of State unemployment compensation laws (Title III). Before the Federal assistance becomes available the State plans, or laws, for the provision of these aids and services must be approved by appropriate Federal agencies.

In determining the eligibility of Indians to those aids and services it is necessary to look first to the provisions of the basic statute. The Social Security Act does not deal with participation by Indians and the intention of Congress is not apparent on the face of the act itself. Nor is its intention clear from the legislative history of the act. An amendment was at one point inserted in the Senate draft of the bill providing specifically for the payment of old-age pensions to the Indians but this was stricken out, indicating an opinion either that it was unnecessary or that it was undesirable. There are, however, certain terms, requirements and conditions in the act which indicate that all the aids and services are intended to be available to all "needy individuals" without regard to race or status, which can be summarized as follows:

In connection with the three types of direct aid it is provided (1) that a State plan must be "in effect in all political subdivisions of the State". Title I, Sec. (2) (a) (1); Title IV, Sec. 402 (a) (1); Title X, Sec. 1002 (a) (1). Indian reservations are within State counties and other political subdivisions. *Porter* v. *Hall*, 271 Pac. 411 (Ariz. 1928); *LaDuke* v. *Melin*, 45 N.D. 349, 177 N.W. 673; *Lebo* v. *Griffiths*, 42 S.N. 198, 173 N.W. 840. (2) Moreover, no State plan is acceptable which imposes as a condition of eligibility for the three forms of direct relief "any residence requirement which excludes any resident of the State" who has resided therein for certain periods. Title I, Sec. 2 (b) (2); Title IV, Sec. 402 (b) (1) (2); Title X, Sec. 1002 (b) (1). The Indian inhabitants of a State are residents thereof. *Porter* v. *Hall*, *supra*; *In re Liquor Election in Boltrami County*, 138 Minn. 42; 163 N.W. 988. An extension of benefits by State law or State administration only to those needy individuals who are not residents of a reservation within the State's borders would be an imposition of a "residence requirement" contrary to the terms of the Security Act. (3) Nor can a State impose "any citizenship requirement which excludes any citizen of the United States." Title I, Sec. 2 (b) (3); Title X, Sec. 1002 (b) (2). By the act of June 2, 1924 (43 Stat. 253) all Indians born within the United States who were not already citizens were made citizens of the United States. The fact that native born Indians are citizens and that citizenship is not incompatible with wardship (*Williams* v. *Johnson*, 239 U.S. 414; *United States* v. *Ramsey*, 271 U.S. 461) is not well known nor understood. There are reports that Indians are being excluded from needed aid because they are not citizens. This misapprehension should be promptly met by the presentation to the State authorities of the above-cited statute and judicial decisions.

As regards the extension to the Indians and Indian communities of State services to be assisted with Federal contributions, the statute likewise contains language to indicate its inclusive scope. It is provided that special attention should be given "rural areas" and "areas suffering from severe economic distress", a description applicable to many Indian communities. But an inescapable indication that Indians may be beneficiaries of these subsidized services is the basis upon which the amount of an allotment by the Federal government is computed. In this case of maternal and child health services (Title V, Part I), Sec. 502 (a) provides for an allotment to each State in the proportion that the number of live births in the State bears to the number in the country as a whole. In the case of services to crippled children (Title V, Part 2), the State allotment will depend upon the number of crippled children in the State (Sec. 512 (a)). The allotment to a State for child welfare services (Title V, Part 3) will depend upon the proportion that the rural population of the State bears to the total rural population in the United States (Sec. 521 (a)). The first element in determining the amount of assistance for public health work (Title VI) is the population of the State (Sec. 602 (a)). In computing these statistics no omission is made of the Indians and official registration and census rolls have been used which, of course, include the Indian population. It would be manifestly con-

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trary to the intention of the act that funds allotted to cover a certain number of people should be used only for a chosen group to the exclusion of others included in the count.

In the case of Federal and State unemployment benefits (Titles II, III, VIII, IX) the question of the exclusion of Indians cannot arise as it is apparent that in so far as they engaged in industrial employment the provisions of the act would automatically apply to them.

From the foregoing it may be said that the language of the statute evidences an intent to insure that the State aids and services receiving Federal subsidy shall reach all the population of the States in need of them. Therefore, it could be said at this point that needy Indians were entitled to the benefits of the act, were it not for certain legal propositions of peculiar applicability to Indians which remain to be considered.

The proposition that general acts of Congress do not apply to the Indians is properly limited to situations where the statute, if applied, would affect the Indians adversely. *Lewellyn* v. *Colonial Trust Co.*, 275 U.S. 232; *United States* v. *Crow Dog*, 109 U.S. 556; Cf. *McCandless* v. *United States*, 25 Fed. (2d) 71 (C.C.A. 3d, 1928). And even this proposition is disregarded where the intent of Congress can be gleaned or where considerations of policy obtrude. The *Cherokee Tobacco Case*, 11 *Wall.* 616; *United States* v. *Whiskey*, 93 U.S. 188; 21 Op. Atty. Gen. 466. Certainly therefore, the bare proposition that general acts do not apply to the Indians, as construed, is not a barrier to the participation by the Indians in benefits intended for the entire population. Nor is the basic policy of the act out of line with the Federal policy of closer cooperation with the States and utilization of State agencies to improve the economic condition of the Indians. (See act of April 16, 1934, 48 Stat. 596.) And it may be assumed that Congress at the time it passed the Social Security Act was cognizant of the fact that in the administration of its statutes and resolutions providing emergency relief funds for grants to States for direct or work relief of "persons in need" (See act of May 12, 1933, 48 Stat. 55, and Resolution of April 8, 1935, 49 Stat. 115) the Indians, ward and non-ward, were considered entitled to, and received, assistance through the States with needy persons of other races. (Letters of July 17, 1933, and November 1, 1934, of the Federal Emergency Relief Administrator to State Emergency Relief Administrators.) Congress could therefore take for granted that in its analagous grants to States for aid to "needy persons" of the various classes specified in the Security Act that Indians ward or non-ward would be included. Furthermore, in H. J. Res. 495 now before Congress defining gratuities to Indians, Congress indicates a recognition of the fact that general public relief and security acts, while not mentioning Indians, nevertheless embrace them, by excluding from offset against Indian tribes money or property paid to Indians under any general public relief program or Social Security Act.

More serious is the consideration pressed by the social security administrators of some States that those Indians who are wards of the Federal Government are entitled to Federal aid and therefore may be disregarded by State agencies. Another angle of the argument is that ward Indians who are living on land still held in trust by the United States are subject to the exclusive jurisdiction of the United States and are not amenable to State laws, therefore they should not be extended its privileges. However, except in certain areas of the southwest where reservations are still intact and self-contained, this is an extremely artificial and legalistic approach. Nor is it entirely accurate as will be shown.

It is undisputed that the Federal Government has no responsibility of guardianship toward the Indians who have no property held in trust by the Federal Government, who are not living on a reservation and who have severed their tribal relations. The State has full control over and responsibility for them. But those Indians who remain wards of the Federal Government are not in a water-tight compartment into which State laws and functions do not penetrate. Ward Indians share in State burdens and privileges although entitled to Federal protection in various ways. This dual relationship may be illustrated by the following facts.

Federal guardianship of ward Indians rests primarily upon the property of the Indians which is held in trust by the Federal Government or under other restrictions. It is significant that the Federal Government may engage in litigation on behalf of an Indian to protect his restricted property but has no legal interest in other civil suits in which he may be involved. *United States* v. *Dewey County*, 14 Fed. (2d) 784 (D.S.D. 1926). The Federal Government also has certain criminal jurisdiction over areas reserved by it for Indians by virtue of the status of the land. The Federal Government is also morally bound to advance their civilization and ability for self-support. But an Indian ward, whether a ward because of his trust property or the maintenance of tribal relations, as a person and a citizen of the State where he resides, has the benefit of and is subject to State laws in manifold phases of his life. The necessity of proving abandonment of tribal relations in order to show an Indian a citizen and entitled to a citizen's rights is unnecessary in view of the citizenship act of June 2, 1924,

supra. An Indian ward votes or is entitled to vote. *United States* v. *Dewey County, supra; Anderson* v. *Mathews*, 174 Cal. 537, 163 Pac. 902; *Swift* v. *Leach*, 45 N.D. 437, 178 N.W. 437. His children are entitled to attend public schools even though a Federal Indian school is available. *LaDuke* v. *Melin, supra; United States* v. *Dewey County, supra; Piper* v. *Big Pine School Dist.*, 193 Cal. 664, 226 Pac. 926. He may sue and be sued in State courts. *In re Celestine*, 114 Fed. 551 (D. Wash. 1902); *Swift* v. *Leach, supra; Brown* v. *Anderson*, 61 Okla. 136, 160 Pac. 724. His ordinary contracts and engagements are subject to State law, *Luigi Marre and Cattle Co.* v. *Roses*, 34 P. (2) 195 (Cal. 1934), and his personal conduct is subject to State law except upon reserved land. *State* v. *Morrin*, 136 Wis. 552, 117 N.W. 1006. He must pay State taxes on all non-trust property which he may own and all fees and taxes for the enjoyment of State privileges, such as driving on State highways, and all taxes, such as sales taxes, which reach the entire population. Where the taxes paid by the Indians are insufficient to provide necessary support for State schools, hospitals, and other institutions caring for Indians, the Federal Government often pays for such services with trust or tribal funds or with gratuity appropriations (See e.g., act of April 16, 1934, 48 Stat. 596). 17 Decisions of the Comptroller of the Treasury 678. And Indian wards are constantly receiving care in State institutions either without charge or with payment from their unrestricted resources. Furthermore, the United States has not provided any old-age pension system for the Indians nor has it made any general provision for Indians for the types of services which it is assisting the States to render under the Security Act.

It is my conclusion from the foregoing that ward Indians who come within the categories of needy persons enumerated in the Social Security Act are entitled to the benefits of that Act.

It remains to be seen what limitations the States have in fact imposed upon the Indians either in their laws pursuant to the act or in the administration of those laws. The Digest of State and Territorial Laws on Old Age Pensions compiled by the Works Progress Administration indicates that on March 1, 1936, a large number of States had statutes which conformed to the requirements laid down in the Social Security Act for State plans for which Federal funds for old-age assistance would be available. None of these statutes specifically excluded or included Indians. In applying these statutes, however, certain provisions have been pointed to by State authorities as barring Indian participation.

The old-age pension law of Montana Section 3 (6) Chp. 170, Laws of Montana 1935, states that an inmate of a public or private institution is not eligible for old-age pension. The Attorney General of Montana, in arguing that this provision excludes ward Indians, has given the word "institution" a very broad meaning so that it would include any I am without authority to interpret State law, it established feature of social or national life. While may be stated that the parallel clause in Section 3 (a) (1) of the Social Security Act, "who * * * is not an inmate of a public institution" can not be interpreted in any such fashion. The phrase must be construed in its entirety and the word "institution" should be related to the word "inmate" which, as defined in Webster's New International Dictionary means a person in a particular building. The word "institution", therefore, must be restricted to its obvious meaning in this connection, that of a specialized establishment housing and caring for persons with particular social or physical maladies. While some Indians may be inmates of institutions, certainly this does not apply to Indians as such. Moreover, the plain purpose of the clause is to exclude those old people who are already receiving institutionalized care from the public. Fortunately the laws of many States place this exception beyond cavil by stating its intent more clearly in specifying "charitable, benevolent, fraternal, correctional institutions, home for the aged, jail, workhouse, insane asylum" etc.

Other questions arise in respect to the limitations on property and income placed upon applicants for old-age assistance under various State laws. These limitations should be applied to Indians exactly the same as to others, and whether or not trust property should be included in the valuation of the applicant's property will depend upon whether a State makes an exception of property which is exempt from legal process. A few States provide that certain State officials may require the transfer to the State of property of the pensioner. Under section 4 of the Indian Reorganization Act, June 18, 1934 (48 Stat. 984) no transfer of restricted Indian lands could be made to the State. However, since the transfer of property is made a discretionary and not a mandatory condition precedent to relief the statutory prohibition of transfer of Indian lands should not bar holders of restricted lands otherwise eligible from receiving relief.

The digests of State and territorial laws granting aid to dependent children and blind persons compiled by the Works Progress Administration as of March 1, 1936, indicate no provisions which would exclude Indians or which raise peculiar problems in their application to Indians.

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The Social Security Act has provided certain measures for preventing the denial of direct assistance to qualified applicants contrary to its terms. Sections 2 (a) (4), 402 (a) (4), and 1002 (a) (4) require a State plan for old age assistance, aid to dependent children, and blind assistance, respectively, in order to be approved, to provide for granting to any individual whose claim for assistance is denied an opportunity for a fair hearing before a designated State agency. An Indian applicant who is denied assistance for reasons other than failure to meet the standard qualifications imposed upon all persons should seek relief from such State agency. If it is found that the State in its law or administration is imposing citizen or resident requirements contrary to the terms of the Social Security Act or violating other express terms, the Social Security Board has power to stop further payments to the State by the Federal Government. Sections 4, 404, 1004. If the Indians fails to obtain relief through administrative channels, he may resort to judicial action.

In summary, I have concluded that under the terms of the Social Security Act providing Federal assistance to States for direct aid to the needy aged, the needy blind and needy dependent children and for improving certain welfare services, Indians, although wards of the Federal Government, are entitled to share in such aids and services when otherwise qualified, and I have found in the State laws which are considered as conforming to the requirements for State plans no provisions which constitute a barrier to Indian participation.

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Solicitor.

TITLE TO RIGHT-OF-WAY LANDS

M-27814 (Supp.) *April 23, 1936.*

The Honorable,
The Secretary of the Interior.

MY DEAR MR. SECRETARY:

You have asked that I consider certain protests against the conclusion reached in my former opinion No. M-27814, which was approved by you on January 30, 1935. In that opinion it was held that the Choctaw and Chickasaw Nations were invested with the title to land selected for railroad rights of way under the Act of February 28, 1902 (32 Stat. 43) where the railroad has never paid compensation for the selected right of way and has never made use of it.

The protests have been made by the oil and gas lessees of part of the homestead allotment of one Laura Burris, an enrolled member of the Chickasaw Nation. At the time the allotment to Laura Burris was made the Choctaw and Chickasaw Railroad Company had filed a map of definite location of its proposed line of railroad for the purpose of securing a right of way in conformity with the provisions of the Act of February 28, 1902, *supra*. Consequently the deed issued to Laura Burris by the Choctaw and Chickasaw Nations granted the homestead allotment "less 6.26 acres occupied as a right of way by the Choctaw and Chickasaw Railway." The railway company, however, did not pay damages for the right of way as required by the statute and has never made use of the land. In those circumstances it would follow from the opinion of January 30, 1935 that the fee estate in the land embraced within the selected right of way is vested, not in the owners of the abutting lands contained in Laura Burris' allotment, but in the Choctaw and Chickasaw Nations.

The oil and gas lessees of the abutting allotted lands maintain that the fee estate in the land of the right of way is vested in their lessors. Their claim is based on three contentions: (1) That under the provisions of section 14 of the Act of April 26, 1906 (34 Stat. 137) the fee estate passes on abandonment of the right of way to the "owner of the legal subdivision of which the land so abandoned is a part"; (2) that the Department has long interpreted that statute in the manner contended for and that there is consequently an established administrative construction on which the claimants and others have relied and which cannot now be lightly overthrown; and (3) that in any event the original allotment deed to Laura Burris conveyed to her the interest in the land covered by the proposed right of way which the Indian tribes had and, thus, that any abandonment or relinquishment of the right of way by the railroad company must as a matter of law inure to the benefit of the allottee or her assigns. It is my opinion that none of those contentions are well founded, but I shall discuss them at some length in the order in which I have stated them.

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The opinion of January 30, 1935, contained a detailed analysis of the 1906 act as well as the granting act of 1902. The conclusion was reached that the 1902 act granted only a right to acquire a right of way after, among other things, the payment of compensation to the Indians, and that the 1906 act operated to invest the abutting property owners with title to abandoned rights of way only if, among other things, the rights of way had actually existed