

March 5th, 1936.

Mr. Guy Hobgood, Superintendent,
Truxton Canon Agency, U. S. Indian Service,
Valentine, Arizona.

My dear Mr. Hobgood:

This will acknowledge receipt of your letter of February 20th in which you ask two questions concerning the laws of Arizona. The first concerns the moving of graves and the second concerns the right of Indian children entering the public school system. I will take the questions up in their order.

With reference to the first question I will quote that portion of our statute relevant to the Peach Springs situation, to-wit:

Section 2728 of the Revised Code of 1928 states:

"The body of a dead person shall not be interred, deposited in a vault, cremated or otherwise disposed of, nor removed from or into another registration district, nor held more than seventy-two hours after death, except upon a permit issued by the local registrar of the district in which the death occurs or the body is found, and such burial or removal permit shall not be issued until, when practicable, a complete and satisfactory certificate of death has been filed with such local registrar."

The above statute refers to the local registrar appointed by the State registrar of vital statistics, who is the secretary of the State board of health, and who maintains offices in the capitol building. I observe from the map, however, that Peach Springs is situated in the Hualpa Indian Reservation and for this reason, the State law may have no application provided the bodies are removed to some place on the Indian Reservation.

There is also a criminal statute covering your question. Section 4632 of the Revised Code of Arizona, 1928, so far as applicable, provides as follows, to-wit:

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Mr. Hobgood:

"Every person who mutilates, disinters or removes from the place of sepulture the dead body of a human being, without authority of law; ~~see~~ is guilty of a felony."

In the event you desire to comply with the State law, in removing the graves of the pioneers mentioned in your letter, I would advise you to get the proper permission from your local registrar.

With reference to your second question, I will state that there are no statutes in Arizona specifically prohibiting Indian children from attending public schools. The rights of such children to attend would be covered by Section 1030 of the Revised Code of Arizona, 1928, as amended by Chapter 65 of the 1933 Session Laws, which reads as follows:

"All schools, other than high schools and evening or night schools, unless otherwise provided by law, must be open for the admission of children between the ages of six and twenty one years, residing in the district. ~~see~~ The board of trustees may admit ~~see~~ children not residing in the district, but within the state, upon such terms as it may prescribe. The children of non-residents of the state may be admitted upon the payment of a reasonable tuition fixed by the board. The board may exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases, and may arrange for the admission of classes of beginners at regular or stated intervals."

It is my opinion that the Indian children who are still wards of the United States Government, and reside on the Indian reservation, are only admissible at the discretion of the board of trustees of the school district to which said children make application, and that such board may make such requirements and prohibitions as it shall see fit. As to the Indians who reside within the school district, and who are citizens of the United States and the State of Arizona, such children are entitled to the same rights as all children in the district.

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Mr. Hobgood:

In answering your questions, I have not endeavored to construe any Federal statutes. The United States District Attorney is in a much better position to advise you in this regard.

I trust this gives you the desired information.

Very truly yours,

JAMES L. SULLIVAN
Attorney General

Wallace W. Clark
Assistant Attorney General.