CHAPTER 12

FEDERAL SERVICES FOR INDIANS

TABLE OF CONTENTS

Section 1. Introduction .................................................. 237
Section 2. Education ...................................................... 238
   A. Development of federal policy .................................. 238
   B. Eligibility for school attendance ............................. 241
   C. Compulsory education ......................................... 241
   D. Use of funds for Indian education ............................ 242
Section 3. Health services .............................................. 243
Section 4. Rations, relief, and rehabilitation ......................... 244
Section 6. Social security benefits ................................... 245
   A. Loans under special Indian legislation ....................... 245
   B. Loans under general legislation ............................... 247
Section 7. Reclamation and irrigation ................................ 251
   A. Operation and maintenance charges ......................... 250
   B. Blackfeet project ............................................. 250
   C. Colorado River project ....................................... 250
   D. Crow irrigation project ...................................... 251
   E. Flathead irrigation project .................................. 251
   F. Fort Belknap project ......................................... 251
   G. Fort Hall project ............................................. 251
   H. Fort Peck Reservation ........................................ 251
   I. San Carlos project ............................................ 252
   J. Uintah .......................................................... 252
   K. Wind River ..................................................... 252
   L. Yakima .......................................................... 252
Section 8. Federal legal services ...................................... 252

SECTION 1. INTRODUCTION

Federal services which the United States provides for Indians are frequently viewed as a matter of charity. The erroneous notion is widely prevalent that in their relationship with the Federal Government the Indians have been the regular recipients of unearned bounties. In reality, federal services were, in earlier years, largely a matter of self-protection for the white man or partial compensation to the Indian for land cessions or other benefits received by the United States. In recent years such services have been continued, partly as a result of the failure of the states to render certain essential public services to the Indians, because of their special relation to the Federal Government.

In the treaty period of our Indian relations, in order to induce the Indian to cease active resistance to further encroachment upon his domain, it was thought wise to educate him in the white man's culture. The Indian's white neighbors would instruct him to seek paths of peace rather than the ways of war, to replace the tomahawk with a religion of love for his fellow man. To obviate responsibility for his support, or the alternative of slow starvation, they would instruct him in the ways of the farm, in the arts of the fireside, and in means of earning a livelihood on his greatly reduced land. This offered a practical alternative to a policy of warfare which, it has been estimated, cost the Federal Government in the neighborhood of one million dollars for each dead Indian.

Reservations were located in the vicinities of army posts. In the panic of an epidemic of smallpox, as a matter of protection to prevent the spread of this disease through the entire population, a statute was enacted which provided for vaccination of Indians by army surgeons. This statute is illustrative of the way in which the Indian health service and other federal services originated.

In making treaties with the Indian tribes, the United States generally offered a more or less substantial quid pro quo for land ceded by the Indian tribes in such treaties and for other promises contained in such treaties that were advantageous to the United States. This quid pro quo might be, and generally was, defined in terms of money, although in some cases the United States undertook to furnish specified supplies or services for a designated period of years. The Indians had little use for money. The practice therefore arose of placing the money in trust in the United States Treasury and expending either the principal or the interest of such funds, in accordance with the wishes of the Indians, for food, clothing, livestock, farm implements, and the pay of blacksmiths, teachers, physicians, and other skilled employees. To this day tribal funds are expended for these purposes.

When treaty and tribal funds of a given tribe came to an end, the Federal Government might have discharged the teachers, physicians, blacksmiths, and other employees maintained by it pursuant to treaty obligation; but many factors, some of them humanitarian, combined to prevent the abandonment of these services. Instead, an increasing amount of money was called "gratuity appropriations," as distinct from treaty appropriations and tribal fund appropriations, was devoted to the maintenance of these various federal services in the Indian country. According to contemporary critics, and according to subsequent official investigations, these funds were in many instances viewed as a matter of charity. The erroneous notion of the way in which the Indian health service and other federal services originated.

See Chapter 4, sec. 17.
See Chapter 15, sec. 23.
cases extravagantly and wastefully disbursed. Irrigation projects, for example, were frequently launched without the benefit of expert technical advice and were consequently improperly constructed and ill-advised.7

With the increase of gratuity appropriations, the picture of the Indian as a charity ward came to loom large in the public eye. In 1875 Congress provided that Indians receiving supplies from the Federal Government might be required to perform useful labor as a condition precedent,8 quite ignoring the fact that many Indians were no more "charity wards" than were holders of federal bonds or other, legal obligations, of the Federal Government.

In an effort to remove federal services to Indians from a gratuity basis, Congress has frequently provided that various expenditures made for the benefit, or, supposed benefit, of Indians should be "reimbursable," that is to say, repayable to the United States Treasury out of the future income of the tribes concerned. Even where Congress has not so provided, the rule has been developed in many jurisdictional acts and court cases that appropriations which were supposed to be gratuities when made were to be reimbursed out of judgments rendered in favor of an Indian tribe.9

More recently the effort to remove federal Indian services from a charitable basis has taken the form of legislation authorizing the Secretary of the Interior to assess fees for various acts and services benefiting Indians.10


10 Section 1 of the Act of May 9, 1930, 22 Stat. 291, 312, 313, as amended by the Act of May 10, 1939, 53 Stat. 708, 25 U. S. C. 561, provided:

In the discretion of the Secretary of the Interior, and under such rules and regulations as may be prescribed by him, fees may be collected from individual Indians for services performed for them, and any fees so collected shall be covered into the Treasury of the United States.


In recent years, and particularly since 1924, when citizenship was granted to all Indians not already citizens,11 the states have assumed a larger role in supplying the Indians with essential public services. In 192912 the Secretary of the Interior was authorized to permit state agents to make inspections of health and educational conditions on the reservations and to enforce sanitation and quarantine regulations or to enforce compulsory school attendance of Indian pupils, as provided by the law of the state, and since 193413 the Secretary has been authorized to enter into contracts with state or other bodies for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians, and to authorize the state to utilize existing federal school buildings, hospitals, and other facilities.

Some states have taken kindly to their added responsibility; others have continued to discriminate against the Indian, as, for instance, those states which deny the Indian services available under the Social Security Act.14

The year 1934 marked a momentous change in Indian policy. The then prevalent economic conditions brought on by the depression emphasized the desperate plight of the Indian. The Wheeler-Howard Act15 was passed. A program was launched, with the assistance of federal and tribal funds, to organize and incorporate Indian tribes, to launch tribal enterprises, to enable tribes and tribal members to become self-sufficient by their own efforts in lines of endeavor congenial to native tastes and talents, and to make possible the transfer to the organized tribes of responsibility for services hitherto performed by the Federal Government.

This program is still too close to its inception to warrant estimation of its success. It may be said, however, that the prevailing tendency today is to turn over to the organized tribes, or to the states, where such tribes and states are willing to accept such burdens, an increasing measure of responsibility for the performance of services which have historically been rendered to the Indians by the Federal Government.16

11 See Chapter 8, sec. 2.
14 Act of August 14, 1935. 49 Stat. 620. See sec. 5, infra, and see Chapter 8, sec. 5.
16 See Chapter 2, sec. 3C.

SECTION 2. EDUCATION

A. DEVELOPMENT OF FEDERAL POLICY

"Father," requested Complanter, speaking for the Senecas in 1792, "you give us leave to speak our minds concerning the tilling of the ground. We ask you to teach us to plough and to grind corn: • • • that you will send smiths among us, to be educated either at the time of the treaty, or at such a time and place as they might agree upon." With equal warmth George Washington replied, through the Secretary of War, that the Senecas might be sure of his willingness and desire to impart to them "the blessings of husbandry, and the arts" and that a number of their children would be received to be educated either at the time of the treaty, or at such a time and place as they might agree upon.17

In such a fashion did the President of the United States and a chief of an Indian tribe first discuss the possibility of governmental assistance in bringing to the red man the advantages to bear either cold or hunger; knew neither how to build a cabin, take a deer, or kill an enemy; spoke our language imperfectly; were therefore neither fit for hunters, warriors, or counsellors: they were totally good for nothing. We are however not the less obliged by your kind offer, though we decline accepting it. And to the Gentleman of Virginia will send us a dozen of their sons, we will take great care of their education, instruct them in all we know, and make men of them. (Benjamin Franklin, Two Tracts etc. (2d ed. 1794), pp. 26-29.)

17 Ibid., p. 166.
tages of a European civilization. Although this particular arrangement was destined not to materialize, the interest it aroused quickened, and on December 2, 1704, educational provisions were included in a treaty negotiated with the Oseola, Tuscarora, and Stockbridge Indians. This was followed in 1803 by a treaty with the Kaskaskia Indians which provided an annual contribution for 7 years for a Roman Catholic priest who, among other things, was to instruct in literature. Thus began the practice, which persisted up to the end of treaty-making in 1787, of including educational provisions in treaties. The provisions covered technical education in agriculture and the mechanical arts, support of reservation schools, boarding schools, or schools and teachers generally, and contributions for educational purposes.

On March 30, 1802, Congress made provision for the expenditure of a sum of money not to exceed $15,000 per annum to promote civilization among the aborigines. For another decade this action stood as the sole indication that Congress had recognized responsibility for Indian education; then, in his first message to Congress, President Monroe called for additional efforts to preserve, improve, and civilize the original inhabitants. This recommendation was acted upon 2 years later when Congress enacted a provision which stood as the organic legal basis for most of the educational work of the Indian Service.

As embodied in the United States Code, the law declares:

"* * *

The President may, in every case where he shall judge improvement in the habits and conditions of such

An unusual educational provision appears in the Treaty of May 6, 1828, with the Cherokee Nation, supra. Art. 5 reads in part:

"* * *

It is further agreed by the United States, to pay two thousand dollars, annual to be expended under the direction of the President of the United States in the education of their children, in their own country, in the arts and the mechanical sciences, and to encourage the Cherokees in the progress of education, and to benefit and enlighten them as a people, in their own, and our language."

(1817-18)
Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and providing them with suitable instruction, as may be enjoined accurately by such instructions and rules as the President may direct, provide a discipline for every bureau or school, the regulation of which shall be annually laid before Congress.

This statute carried with it a permanent annual appropriation of $10,000 "for the purpose of providing against the further decline and final extinction of the Indian tribes, adjoining the frontier settlements of the United States, and for introducing among them 'the habits and arts of civilization.'" 1

The expenditure of this fund occasioned no little difficulty. The President, anxious to apply it in the most effective manner possible, addressed a circular letter to those societies and individuals—usually missionary organizations—that had been prominent in the effort to civilize the Indians, offering the cooperation of the Government in their various enterprises. Soon the $10,000 was apportioned among them, and later, as treaty funds became available for this purpose, these, too, generally were disbursed for such establishment.

A significant development in the history of Indian education was the establishment by a number of Indian tribes of their own schools. As early as 1805, the Choctaw chieftains maintained a school with annuity funds. 2 In 1841 and 1842, before a number of states had provided for public schools, the Cherokee and Choctaw nations had put into operation a common-school system.

In 1855, the Commissioner of Indian Affairs, George W. Manypenny, noted that total expenditures for education among the Indian tribes during the 10-year period ending January 1, 1855, exceeded $2,150,000. Apparently only a small portion of this sum was contributed directly by the Government. For the Commissioner's report shows that while $102,107.14 had been furnished by the United States, $824,160.61 had been added from Indian treaty funds, over $800,000 had been paid out by Indian nations themselves, and $830,000 had come from private benevolence. 3

After the Civil War a more liberal policy for participation of the Government in the education of the Indians was pursued. In 1870, $100,000 was set aside for this purpose, and in succeeding years the sums allocated were sufficiently liberal to permit a definite expansion of activities.

By 1878, several nonreservation boarding schools had been opened. Indian youths from all parts of the country attended the United States Indian Training and Industrial School at Carlisle, Pennsylvania. Other schools were located at Chemawa, Oregon; Lawrence, Kansas (Haskell Institute); Genoa, Nebraska; and Chilocco, Indian Territory. 4

By the Act of July 31, 1882, it was provided that abandoned military posts might be turned over to the Interior Department for the purpose of conducting therein Indian schools.

Government participation increased when, in 1890, the Indian Service began to use public schools for the instruction of Indian children. Individual Indians had attended public schools before, but under the policy adopted in 1890 the Office of Indian Affairs reimbursed public schools for the actual increase in cost incurred by instructing the Indian children. The practice was in accordance with the ultimate plan of the Office of turning over the Indian day schools to the tribes as soon as white settlers and taxpayers were present in sufficient numbers to support the establishment of local systems of schools. However, the Use Of public schools for educating Indian children did not become a common practice until after 1900, when it developed rapidly.

The recent course of federal activity with respect to Indian education is charted in the following excerpt from a recent study prepared under the auspices of the President's Advisory Committee on Education:

The period since 1900 is marked by a number of changes. In 1906 the schools—several hundred day schools had been established—of the Five Civilized Tribes in Oklahoma, previously operated by the tribal governments, were placed in charge of the Office of Indian Affairs. At first they were operated under contract but later by the Office of Indian Affairs. A uniform course of study for the Indian schools—now hardly to be regarded as a progressive step—was provided in 1916. In order to increase the efficiency of the teachers, provision was made in 1912 for educational leave not to exceed 15 days a year to attend teachers' institutes or training schools. In 1922 this leave was increased to 30 days. A provision in 1928 permitted 60 days of educational leave in any 2-year period.

Some of the changes which occurred are reflected in the data on enrollment of Indians in schools.

Since then, a number of other changes have taken place, largely in response to criticism voiced by the Report of the Institute for Government Research, in 1928, and the Report of the National Advisory Committee on Education in 1931. These changes are summarized in additional passages from the 1939 Advisory Committee study:

A material change has occurred in the point of view of the education of Indians, and a program is being developed which seeks to relate instruction to the needs and interests of children as well as to develop initiative and independence. Much of the deadening routinization has been eliminated. Increased emphasis has been placed on community day schools, there has been a notable decrease in the enrollments of Government boarding schools, and the programs of the boarding schools have been improved to a point primarily the need for secondary education.

Vocational education adapted to the needs of Indian youth has received some attention. Provision has been made for the higher and technical education of Indian youth. Child labor in the schools has been reduced, although there is still too much of it in the elementary boarding schools. Improvement has been made in the educational personnel through higher requirements and increases in salaries. Congress has also made larger

1 Act of March 3, 1819. 3 Stat. 516. The repeal of this permanent appropriation was contemplated several times and finally accomplished by the Act of February 14, 1873. c. 138. 17 Stat. 437, 461. This appropriation became known as the "civilization fund." Blauch, Educational Service to Indians, Statutes at Large, p. 11, prepared for the Advisory Committee on Education (1939), p. 32.

2 R. A. State Papers (Indian Affairs, class I. vol. 2) 1815-27, pp. 200-201.

3 Blauch, op. cit., p. 33.


5 Blauch, op. cit., p. 33.


8 Blauch, op. cit., p. 34.
appropriations to provide for larger expenditures per child in the schools. Educational management. has been somewhat decentralized, more control being given to the regional and local superintendents.

Another innovation is the Act of April 18, 1894, commonly known as the Johnson-O’Malley Act providing for federal-state cooperation. Under the terms of this legislation, moneys appropriated by Congress for Indian education may be turned over to “any State or Territory, or political subdivision thereof” or to “any State university, college, or school” or “any appropriate State, or private, corporation, agency, or institution” under a contract by which the recipient of federal funds undertakes to provide educational facilities in accord with standards established by the Secretary of the Interior to a specified number of Indian students. So far contracts in accordance with this act have been made, with Arizona, California, Minnesota, and Washington.

In line with the foregoing tendency towards decentralization of federal educational activities it should be noted that in a long series of special statutes Congress has appropriated money directly to various counties and school districts for the maintenance of public schools attended by Indians. Generally such statutes contain some such provision as the following:

- * * * That there is hereby authorized to be appropriated, out of any money in the Treasury for the purpose of cooperating with school district * * * in the improvement and extension of public-school buildings: Provided, That the schools * * * shall be available to both Indian and white children without discrimination, except that provision may be made for Indian children attending in the discretion of the Secretary of the Interior * * *.

From these varying treaty stipulations, statutory provisions and governmental policies have emerged a number of problems concerning education of the Indian. Are all Indians eligible to attend federal schools or state schools? Can Indians be compelled to attend schools? What are the limitations upon the use of funds for Indian education? At various times these and other questions have been dealt with judicially and the substance and application of these decisions must be examined.

B. ELIGIBILITY FOR SCHOOL ATTENDANCE

The most important restriction imposed on the Indian’s right to attend federal schools is found in the provision that

* * * No appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided.

This restriction, contained in the Appropriation Act of May 25, 1918 has been embodied in title 25 of the United States Code as section 297.

At a time when allotment was considered a step towards the termination of governmental obligations, Congress thought it proper to enact a specific statute which declares that the fact of allotment shall not be construed as a reason for excluding the children of allottees from the benefits of federal appropriations for education.

The eligibility of Indians to attend state schools is primarily a matter of state law, and therefore need not be considered at this point. The existence of various federal statutes designed to induce the states to offer educational facilities to Indians has already been noted, and the constitutional issues involved in state discrimination are elsewhere analyzed.

Under certain conditions non-Indian children have the right to attend Indian schools.

C. COMPULSORY EDUCATION

The Secretary of the Interior is authorized at the present time to make and enforce regulations necessary to secure regular attendance of Indian children at Indian or public schools.

Several treaties contained provisions for compulsory school attendance for children between specified ages and for a specified part of the year. Failure to comply with these provisions might involve penalties. However, compulsory education was not a common feature of treaties up to the cessation of treaty-making in 1871.

At least as early as 1877, common schools and compulsory education were urged by the Commissioner of Indian affairs as a general policy.

In 1891 Congress provided for regulations to enforce, by proper means, the regular attendance of Indian children of suitable age and health at schools established for their benefit. In 1898 much stronger methods were adopted. In the discretion of the Secretary of the Interior, parents were given the alternative of sending their children to school or losing their portion of the annual rations or subsistence.

A year later, Congress made it clear that compulsory attendance was not to apply to nonreservation schools, enacting legislation which forbade the removal of Indian children to reservations outside the state or territory in which they resided without the consent of parents or next of kin, and, further declared:

* * * And it shall be unlawful for any Indian agent or other employee of the Government to induce, or seek to induce, by withholding rations or by other improper

Indian blood.” (Davis v. Pitka School Board, 3 Alaska 481, 491 (1908).) See also Chapter 21, sec. 7.


See infra. supra.

See Chapter 8, sec. 10.


For regulations regarding education of Indians, see 25 C. F. R. 41.1-47.7.


Treaties of April 19, 1858, 11 Stat. 743, and March 12, 1858, 12 Stat. 997, carried the definite penalty for failure to comply with withholding annuities by the Secretary of the Interior. The Treaty of April 29, 1868, et seq., 15 Stat. 635, contained a pledge to comply. See fn. 72, infra.


means, the parents or next of kin of any Indian to consent to the removal of any Indian child beyond the limits of any reservation.

This provision was reenacted a year later, and has been incorporated in title 25 of the United States Code as section 286.

Under this statute it has been suggested that a writ of habeas corpus will be issued to compel the release of an Indian child placed in a nonreservation school without parental consent.

The Indian Service sought to evade the force of this statute by having a local Indian agent apply in the courts of the state to be appointed the guardian of the persons, of the Indian children. His application was granted and he was directed to place the children at the Industrial school, which was done. Later this proceeding was declared invalid by the federal court, which declared that if a county court could appoint a guardian of Indian children and could direct the placing of these children in any of the schools of the state, then the tribal condition of the Indians could be speedily broken up, not in pursuance of the acts of the National Government, but through the enforcement of the laws of the state acting upon the persons and property of the Indians.

Consent of parents, guardians, or next of kin is not required to place Indian youths in an "Indian Reform School.

No Indian pupil under the age of 14 may be transported at Government expense beyond the limits of the state or territory where its parents reside or of the adjoining state or territory.

In 1913 an act was passed which authorized retention of annuities due to Indian minors from parents who refused to send their children to some established school.

After Indians became citizens and responsibility for the Indian devolved to some extent at least upon the states, state agents and employees, under regulations of the Secretary of the Interior, were authorized to enter reservations as trust officers to enforce laws of states requiring regular school attendance.

D. USE OF FUNDS FOR INDIAN EDUCATION

From time to time Congress has placed certain restrictions on its appropriations for the support of Indian schools.


The following are cases involving Indian education:

In 1897, Congress declared it to be the policy of the government thereafter to make no appropriation whatever for education in any "seminary school." In 1904, contracts were made with mission schools, the money being taken from treaty and trust funds (tribal funds) on request of Indians. This use of tribal funds was challenged as being contrary to the policy stated in the appropriation act for 1897. The Supreme Court held, in 1905, that both treaty and trust funds to which the Indians could lay claim as a matter of right, were not within the scope of the statute and could be used for sectarian schools.

In 1917, a statute was enacted which provided that "no appropriation whatever out of the Treasury of the United States" should be used "for education of Indian children in any seminary school." The effect of the newly added phrase "out of the Treasury of the United States" is not clear. At the present time money is appropriated for the institutional care of Indian children in sectarian schools rather than for their instruction.

Controversies in the Court of Claims involve educational provisions of treaties and the use of tribal funds for educational purposes.

Legislation limiting the annual per capita cost in Indian schools has been repealed.

All expenditures of money appropriated for school purposes among Indians are under the direction of the Commissioner of Indian Affairs, subject to the supervision of the Secretary of the Interior.

Tribal and gratuity funds are made available for advances to worthy Indian youth to enable them "to take educational courses, including special courses in agriculture, home economics, forestry, and other industrial subjects in colleges, universities, or other institutions, the advances to be reimbursed in notes not to exceed 8 years."

The status of Indian Service educational personnel involves problems of Indian office structure and policy, which are separately treated.


The Act of June 21, 1906, 34 Stat. 325. 326. 25 U. S. C. 278, provided for receipt of rations by mission schools for children enrolled in such schools who were entitled to rations under treaty stipulations.

Act of March 3, 1905. 35 Stat. 54 and 55. supra.


Act of March 2, 1929. 45 Stat. 1534.


See sec. 6 infra.

See Chapter 2.
When the Federal Government assumed the education of Indians, some degree of responsibility for their health was incidentally involved, and the first expenditures for Indian health were made from funds appropriated for education and civilization. Early expenditures for health and medical care were made from tribal funds under treaties and from general appropriations for education or incidentals. These appropriations were allotted among various religious and philanthropic societies—already active in educational and missionary work among the various Indian tribes.

While the superintendent of Indian Affairs was under the War Department, the Indians were for the most part in the vicinities of military posts. It was a natural— and convenient thing that dispensation of medical care and sanitary regulation be assumed by members of the army medical staff located on the nearby posts.

In 1822, Congress authorized the Secretary of War to provide vaccination against smallpox for the Indians and made an appropriation for that purpose.

In 1849, when the Department of the Interior was established, medical care of the Indian—under the Bureau of Indian Affairs passed from military to civil control. Under this department, agency physicians on the reservation at first gave little attention to the Indians and acted more in the capacity of doctors for the government employees, or in connection with Indian schools. Treaties entered into provisions for physicians and hospitals. In 1873, measures were taken towards furnishing organized medical facilities and an educational and medical division which continued until 1877. By 1874, about one-half of the Indian agencies were each supplied with a physician.

After 1878 physicians on Indian reservations were required to be graduates of medical colleges. Between 1889 and 1890, several hospitals were established. In 1908, prevalence of trachoma among the Indians had become so devastating that funds were appropriated for investigation, treatment, and prevention of this disease, and in 1912 money was allotted to the Public Health and Marine Service for a survey of trachoma and tuberculosis.

After 1911, appropriations, under the heading "relief of distress and prevention of contagious diseases" were greatly increased and were spent on correspondingly increased medical care and hospital facilities. Since 1921, when the Bureau of Indian Affairs was authorized to expend funds for the conservation of health, funds have been appropriated specifically for that purpose. In 1924, a special division of health was established in the Office of Indian Affairs.

Fees may be charged for medical, dental, and hospital services under such rules and regulations as the Secretary of the Interior may prescribe. Other regulations have force relative to health activities of the Indian Service. Briefly summarized, state that health personnel is subject to civil service regulations; physicians may not engage in outside practice; they are responsible for health conditions on the reservation, prevention of diseases and are required to treat and medically instruct Indians at established offices, clinics, or in their homes; they are required to make reports of all contagious diseases, inoculations, immunizations, vital statistics; cooperate with state officials and otherwise enforce necessary quarantine regulations and sanitary inspections; immunize and inoculate against contagious diseases. All admissions and discharges to and from hospitals are upon order of physician. Adults leaving the hospital against the advice of physician in charge must give a written release of all liability to the Indian Service. Parents or guardians must give written permission for hospitalization of a minor or incompetent person and consent for surgical operations must be obtained from parents or guardians.

For regulations concerning hospital and medical care of Indians, see 25 C. F. R. 84.1-85.15.

See Sec. 2 supra.


"The other called Caleb, not long after took his degree; . . . died of a consumption at Charlestown, where he was placed . . . under the care of a physician . . . where he was not for the best means the country could afford, both of food and physic . . . ."

Accounts of the superintendent of Indian Affairs of 1820-21 include items for medical service and supplies. 8th Annual Report, U.S. Department of the Interior, pt. 12, 1821-27, p. 299.

Act of May 25, 1824, 4 Stat. 35.

Act of May 3, 1832, 4 Stat. 514. "For vaccine matter and vaccination of Indians was a regular item in appropriation bills.


Speech of Dr. James Townsend before Western Branch, American Public Health Association, July 24, 1839, "Government and Indian Health;" Treaty of January 22, 1855, with the Flatheads, etc., Indians, 12 Stat. 927, 929; Treaty of January 26, 1855, with the S shitels Indians, 12 Stat. 931, 932; Treaty of January 31, 1855, with the Makahs, 12 Stat. 939, 941; Treaty of June 9, 1855, with the Walla-Walla, Cayuses, and Umatilla Bands, 12 Stat. 945, 947; Treaty of June 9, 1855, with the yakama Nation, 12 Stat. 951, 953; Treaty of June 11, 1855, with the Nez Perces, 12 Stat. 957, 959; Treaty of June 25, 1855, with the Indians in Middle Oregon, 12 Stat. 963, 965; Treaty of July 1, 1855, and January 25, 1856, with the Quinault and Quileute Indians, 12 Stat. 971, 973; Treaty of July 16, 1855, with the Flatheads, etc., 12 Stat. 975, 977; Treaty of October 21, 1867, with the Kiowa and Comanches, 15 Stat. 581, 584; Treaty of October 26, 1867, with the Cheyennes and Arapahos, 15 Stat. 593, 597; Treaty of April 29, 1868, et seq., with the Sioux, 15 Stat. 635, 638: Treaty of May 7, 1868, with the Crow Tribe, 15 Stat. 649, 652; Treaty of May 10, 1868, with the Northern Cheyenne and Arapahos, 15 Stat. 655, 658; Treaty of July 3, 1868, with the Eastern Band of Shoshones and Bannocks, 15 Stat. 673, 676.
the patient. If an adult; if a minor or incompetent, from parents or guardians.  

Under regulations relating to hospitals, indigent Indians recognized as tribal members are admitted without cost. In tribal hospitals supported by tribal funds, all tribal members are entitled to free hospitalization. Priority of admission is based on necessity for hospitalization and degree of Indian blood. White wives of Indians. Indian children from Government schools, Indian widows of whites or of nonrestricted Indians, if residing on reservations, are eligible for admission. Indian wives and children of white men are not admitted unless residents on reservations and participants in tribal affairs.

Indians as citizens of the states in which they reside frequently claim and sometimes obtain the public health protection of the various states. To facilitate cooperation between the state and Federal Government, the Secretary of the Interior in 1929 was authorized to permit agents and employees of any state to enter on tribal land, reservation, or allotment therein for the purpose of making inspections of health and enforcing sanitation and quarantine regulations.

In 1854, the Johnson-O'Malley Act became law and provided that the Secretary of the Interior might enter into contracts with states or territories for medical attention to Indians. In 1895, under the Social Security Act, increased health benefits were made available to the Indians.

In 1938, the President, by Executive order, provided that officials and employees of the Indian Service serving in a medical or sanitary capacity could hold state, county, or municipal positions of similar character without additional compensation, with the consent of the Secretary of the Interior.

In the enforcement of public health regulations the Secretary of the Interior has been authorized to impose quarantine and when necessary to confine persons afflicted with infectious diseases.

SECTION 4. RATIONS, RELIEF, AND REHABILITATION

The common belief that Indians, as such, receive rations from the Federal Government is not in accord with the facts. As noted in the introduction to this chapter, frequently In sales of Indian land supplies were used instead of cash as the quid pro quo offered to compensate the Indian for value received by the United States. Later, as the Indians advanced sufficiently in the knowledge of white man's civilization to purchase their own supplies and clothing, the value of promised supplies was frequently commuted and paid in money per capita to the members of various tribes.  

As a matter of hospitality, a law authorizing food for Indians visiting at army posts has remained on the statute book for over a hundred years. Relief, frequently dispensed in the form of food, has been authorized in general appropriations for indigent Indians. The charitable nature of these limited appropriations, however, has been mistakenly attributed generally to all provisions relating to rations. The failure to recognize that issuance of rations may be a form of payment of obligations to Indians resulted in the provision in the Act of March 3, 1875, that able-bodied male Indians give service and labor in return for supplies distributed to them.

At the present time, when relief is given in the form of food and supplies, labor is required of recipients of relief rations wherever possible. Such rations may not be sold or exchanged. They can be shared only with dependents of the recipients.

Under recent appropriation acts tribal funds have been made available for relief purposes.

Care of insane Indians has for many years been considered within the powers of the Secretary. Payment for their care is made to various hospitals for the insane including St. Elizabeth's Hospital in the District of Columbia, which is a federal institution.

Commitment of an Indian to a hospital for the insane requires a hearing to determine the need for and the advisability of commitment.

The laws of the states where reservations are located are conformed to in the commitment of insane Indians to state mental hospitals or state institutions for the insane. An insane Indian residing on an Indian reservation under the jurisdiction of the United States may be committed to St. Elizabeth's Hospital by order of the Secretary of the Interior. A certificate of insanity made by two reputable physicians who have conducted an examination of the Indian is required before issuance of an order of the Secretary. Notice of the time and place of such examination must be personally served upon the alleged insane Indian, the spouse, parent, or other next of kin known to be residing on the reservation. The Indian alleged to be insane has the right to present witnesses and to submit evidence of his sanity.

In any case in which an Indian is alleged to be insane or of unsound mind, and such Indian has displayed homicidal tendencies or has otherwise demonstrated that if permitted to remain at large or to go unrestrained, the rights of persons and of property will be jeopardized or the preservation of the public peace imperiled, the commission of crime rendered probable, the superintendent has authority to take such Indian into custody and to detain him temporarily in some suitable place pending proper legal adjudication of his insanity.

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Allocations are made to the superintendents of the various agencies for the relief of indigent Indians under their supervision. These allocations are spent chiefly for supplies, food, and clothing; a limited amount being spent also for work relief and for subsistence grants when unusual circumstances warrant such procedure. Rarely in relief given in the form of cash.

Relief situations are often of an emergency nature and purchases for relief dispensation are permitted without usual advertisement required by R. S. § 3709. Compliance is apparently required only with the provisions of the Act of May 27, 1900, 46 Stat. 931, requiring purchasers of shoes or other articles available from prison manufacture to be made through the Federal Prison Industries, Inc.—Hearings, H. Subcomm. of

SECTION 5. SOCIAL SECURITY BENEFITS

In 1936 the Solicitor of the Interior Department rendered an opinion which held that the Social Security Act was applicable to the Indians; the Act contemplates three types of direct aid by states in cooperation with the Government to their needy citizens, that is, aid to needy aged individuals, to needy dependent children, and to needy individuals who are blind.

In connection with these, three types of direct aid, it was determined that a state plan must be "in effect in all political subdivisions of the State," and as Indian reservations are included within states, counties, and other political subdivisions, Indians are entitled to aid under state plans.

Other provisions of the Social Security Act provide federal assistance in the care of crippled children, maternal health service and public health service, special attention being given to rural areas and areas suffering from severe economic distress. One of the bases for allotment of federal funds was population of states. Statistics relating to population included Indians. Their inclusion in the compilation would seem to prohibit any implication that Indians were to be deprived of the benefits of the act. To quote the Solicitor:

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 should be manifestly contrary 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.

Furthermore, it was held that, as citizens, Indians were entitled to social security benefits, all Indians who were not already citizens having become so by the Act of June 2, 1924.

In view of these considerations, the Solicitor held that no distinction is justified between the Indian and other state citizens, and that the law requires that social security benefits be distributed without discrimination against the Indians.

A. LOANS UNDER SPECIAL INDIAN LEGISLATION

Since 1912, Congress has appropriated gruity funds for reimbursable loans direct from the Government to individual

Loans advanced by the Federal Government to the Indians are financed from gratuity appropriations, appropriations from tribal funds, and revolving credit funds established under the Indian Reorganization Act and the Oklahoma Welfare Act. The Klamath Indians may borrow from a revolving credit fund specifically set up for that tribe.

In addition, loans and grants have been made available to the tribes and their members under emergency relief appropriation acts beginning in 1935 for financing rehabilitation of families in stricken agricultural areas. It is also possible for Indian tribes to borrow from other federal agencies funds appropriated for such purposes in promotion of the general welfare of the nation as the best housing development, when the tribes meet the eligibility requirements of the controlling federal legislation.

A. LOANS UNDER SPECIAL INDIAN LEGISLATION

Since 1912, Congress has appropriated gratuity funds for reimbursable loans direct from the Government to individual

A chief object of recent rehabilitation work has been to provide landless Indians with land, houses, outbuildings, fences, water supply, etc., so that with equipment and livestock provided from other sources they may be enabled to work the land in a self-supporting manner. Aid to individual Indians in this field has generally taken the form of loans rather than grants, and is therefore considered under section 6 of this Chapter.


The National Resources Board, as the result of a survey of Indian homes in 1936, has reported that some 70 percent of Indian dwellings are probably below a reasonable living standard.

FEDERAL LOANS

Prior to 1938 loans were made in the form of property, but since that year Indians have received cash loans. These loans were designed to establish Indians in self-supporting individual enterprises including farming, stock raising, and other industries. Loans have been granted also to assist old and indigent Indians who have land they cannot use.

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