

**Whether the Circle of Nations Wahpeton Indian School Campus  
Constitutes "Indian Country"**

M-36985

August 16, 1996

**Indians: Indian Country: Generally**

Determining whether a "dependent Indian community" exists within the meaning of the Indian country statute, 18 U.S.C. § 1151(b), is made on a case-by-case basis, considering all the circumstances relevant to the principles applied by the courts in interpreting that phrase.

**Indians: Indian Country: Dependent Indian Community**

A 1940 Solicitor's memorandum, concluding that lands purchased by the United States for Indian schools and hospitals cannot constitute Indian country unless an Indian tribe or group has occupancy rights on the land, is of limited relevance because it was issued prior to enactment of 18 U.S.C. § 1151, and prior to judicial interpretation of "dependent Indian community," as used in that statute.

**Indians: Indian Country: Dependent Indian Community**

The multi-tribal character of the Circle of Nations School, its remoteness from any reservation, and the absence of a tribal jurisdictional presence, which means a partial jurisdictional vacuum would be created if the campus were Indian country, leads to the conclusion that the campus is not now a "dependent Indian community" and thus not Indian country under 18 U.S.C. § 1151(b).



# United States Department of the Interior

OFFICE OF THE SOLICITOR

**AUG 16 1996**

M-36985

Memorandum

To: Secretary

From: Solicitor

Subject: Whether the Circle of Nations Wahpeton Indian School Campus Constitutes "Indian Country"

The North Dakota Attorney General, the School Board for the Circle of Nations School (formerly Wahpeton Indian School), and the North Dakota congressional delegation have all requested a legal opinion regarding the Department of the Interior's position on whether the Circle of Nations School (CNS) is located in "Indian country," as defined in 18 U.S.C. § 1151.

For the following reasons, I conclude that the CNS campus does not, at this time, constitute a "dependent Indian community" and is, therefore, not "Indian country."

## BACKGROUND

In 1904 Congress directed establishment of the Wahpeton Indian School by instructing the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, to purchase land and erect buildings and other improvements with a \$100,000 appropriation. Act of April 21, 1904, ch. 1402, 33 Stat. 189, 215. This Act required the school to be for an Indian agricultural farm and stock-raising, "under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him . . . ." Id. at 216.

The School is located on 52 acres of land purchased for that purpose. Since its establishment in 1908, the lands and facilities have been used for the sole purpose of educating Indian children. The School currently serves students in the fourth through eighth grade level. In 1982, the United States District Court for the District of Columbia described the school's objective as reflecting "the broader needs of elementary level Indian students in today's society. The School educates Indian children, provides home care, a community environment, and a social living situation." Omaha Tribe of Nebraska v. Watt, 9 Ind. L. Rep. 3117, 3117 (D.D.C. July

























