



New Mexico Court of Appeals Affirms Ruling that a Parcel Within the Former Fort Wingate Military Reservation is “Indian country”

In *State of New Mexico v. Steven B.*, No. 31,322 (N.M. Ct. App., April 1, 2013), the New Mexico Court of Appeals held that the State lacked criminal jurisdiction over a crime committed on Parcel Three of the former Fort Wingate Military Reservation, affirming an earlier decision holding that land was a “dependent Indian community” under 28 U.S.C. § 1151 and the Supreme Court’s opinion in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). Title to Fort Wingate has been held by the Bureau of Indian Affairs (“BIA”) since 1950, and Parcel Three is the location of BIA-operated Wingate High and Elementary Schools and student dormitories, where the majority of students are Navajo or members of other Indian tribes. The school board is an entity of the Navajo Nation, the school principals are BIA employees, law enforcement is provided by the Nation, the State, and McKinley County, and the Navajo Nation courts exercise jurisdiction over misdemeanors. The State, while conceding that Parcel Three is under federal superintendence, argued that it was not “set aside by the Federal Government for the use of the Indians as Indian land,” relying on an order by the United States District Court for the District of New Mexico, *United States v. M.C.*, 311 F. Supp. 2d 1281 (D.N.M. 2004), which had concluded that Parcel Three was not Indian country. Citing the Navajo Nation’s emergency response, court jurisdiction, and school operation, the *Steven B.* Court concluded that Parcel Three was set aside for Indian use, and thus was “Indian country,” and affirmed that the State lacked jurisdiction to prosecute crimes committed on Parcel Three.

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