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ARIZONA ATTORNEY GENERAL

April 13, 1961

Mr. Jay Edson, Executive Secretary
Arizona State Athletic Commission
5220 W. Indian School Road
Phoenix, Arizona

Dear Mr. Edson:

You have asked us for our opinion on whether the Arizona State Athletic Commission has jurisdiction over wrestling activities taking place in Tuba City, Arizona. These activities are being conducted at the Tuba City Civic Center, which is owned and operated by the Navajo Tribe and is located on tribal lands within the Navajo Reservation.

Since this office has given several prior opinions, directly or indirectly, answering the jurisdictional question you have raised, it is not felt necessary that we issue another formal opinion on this subject. As early as March 14, 1950, the Attorney General, under Opinion No. 50-59, held that our state laws do not apply to Indian Reservations, except insofar as Congress may have delegated such authority to Arizona. Activities such as those under consideration have not been delegated to our State. Therefore, they remain under the control of Federal laws and rules and regulations promulgated thereunder.

Our State Supreme Court has held that the purpose and intent of the Arizona Constitutional provisions providing that Indian lands and activities conducted thereon should remain under the absolute jurisdiction and control of our United States Congress, was to enable our Federal Government to control and protect Indians living within reservations and thus carry out and fulfill its obligations towards these dependent people. On this general field, Cohen's Handbook of Federal Indian Law states as follows:

"That state laws have no force within the territory of an Indian tribe in matters affecting Indians is a general proposition that has not been successfully challenged,

<p>L. C. HUERTA</p> <hr/> <p>I Concur S. J. MACALUSO</p> <p>BARRY LEVERANT</p> <hr/> <p>I Concur ROBERT W. PICKRELL</p> <p>CLARK KENNEDY</p>
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"It is enough for the present to note that the domain of power of the Federal Government over Indian affairs marked out by the federal decisions is to complete that, as a practical matter, the federal courts and federal administrative officials now generally proceed from the assumption that Indian affairs are matters of federal, rather than state, concern, unless the contrary is shown by act of Congress or special circumstance. Thus, without questioning the constitutional doctrine that states possess original and complete sovereignty over their own territories save insofar as such sovereignty is limited by the Federal Constitution, a sense of realism must compel the conclusion that control of Indian affairs has been delegated, under the Constitution, to the Federal Government and that state jurisdiction in any matters affecting Indians can be upheld only if one of two conditions is met: either that Congress has expressly delegated back to the state, or recognized in the state, some power of government respecting Indians; or that a question involving Indians involves non-Indians to a degree which calls into play the jurisdiction of a state government. *****"

The same year by Opinion No. 50-228, the Attorney General answered the following question: "Is this department required by law to test weighing and measuring devices on the Indian Reservations in Arizona"? The following conclusion was given:

"It is therefore the opinion of this office that jurisdiction over Indians and Indian Reservations being exclusively in the Federal Government, your department has no authority to enter upon a reservation and test weighing and measuring devices thereof."

The Attorney General on February 6, 1953, wrote Opinion No. 53-25, in answer to the question as to whether the State Mine Inspector had authority to enforce his directives concerning uranium mining on Indian Reservation land. Although this particular opinion touches on the problem involving Indian land status, its conclusion, which provides as follows, can be of general application:

"In the light of the Arizona enabling act in its interpretation by the Arizona Supreme Court in conjunction with the Federal Indian law it must be concluded that the Arizona State Mine

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Inspector has no power to enforce his directives concerning uranium mining on Indian Reservation lands within the geographical boundaries of the State of Arizona."

On the general field of civil and criminal jurisdiction of the State of Arizona within an Indian Reservation, the Department of Law, under Opinion No. 60-30, held as follows:

"In granting consent for the state to assume jurisdiction pursuant to Section 6 (P.L. 280) it authorizes the state 'to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act.'"

This particular opinion quotes the observation of our United States Supreme Court as set forth in the case of Lee v. Williams, 358 U.S. 217, 3 L. Ed. 2d 251, 79 S.Ct. 269:

"In a general statute Congress did express its willingness to have any State assume jurisdiction over reservation Indians if the State Legislature or the people vote affirmatively to accept such responsibility (citing Sections 6 and 7 of Public Law 280). To date, Arizona has not accepted jurisdiction, possibly because the people of the State anticipate that the burden accompanying such power might be considerable.'"

It has been argued that since Indians are citizens of the United States and of the state within which they live, they must be treated as having been emancipated from Federal supervision. In answer to such argument our Arizona Supreme Court has repeatedly held that the mere fact Indians have become citizens does not deprive the Federal Government of the right and power to pass laws and authorize the issuance of regulations for the protection of Indians as tribal people.

It might well be pointed out that the actions contemplated by the Arizona State Athletic Commission in any community, including those within Indian Reservations, would be of mutual benefit to the state and the Indian tribe. Yet this would not be pertinent in that the general rule holds that we are bound to follow the law as we find it irrespective of its disadvantages.

It is, therefore, the conclusion of the Department of

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Law, as consistently held by prior Attorneys General opinions, that the Arizona State Athletic Commission does not have jurisdiction relative to the wrestling activities that may be conducted at Tuba City, Arizona.

Yours very truly,

ROBERT W. PICKRELL
The Attorney General

C. Lawrence Huerta
Assistant Attorney General

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