

Department of Law
Office of the

ATTORNEY GENERAL
State Capitol
Phoenix, Arizona

February 11, 1959

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ARIZONA ATTORNEY GENERAL

Honorable Robert E. Morrow, State Senator
Twenty-fourth Legislature
State House
Phoenix, Arizona

Dear Senator Morrow:

The Attorney General belatedly acknowledges receipt of your letter of January 19, 1959, wherein you propose four questions concerning the impact of the decision of the Supreme Court of the United States of January 12, 1959, upon the jurisdiction of the State of Arizona over Indians residing on reservations. You refer to the case of Paul Williams and Lorena Williams, Husband and Wife, Petitioners, v. Hugh Lee, Doing Business as Ganado Trading Post, on Writ of Certiorari to the Supreme Court of Arizona to review the judgment of that court in 83 Ariz. 241, 319 P.2d 998.

We will state the questions seriatim as you propound them and answer to questions in the order stated.

(1) Are Indians upon their reservations under the control of our other branches of State Government, the Legislature, and Executive in any respect?

The answer to this question is "no".

Upon this question the Supreme Court of the United States, in the above opinion referred to, said:

"* * * The Tribe itself has in recent years greatly improved its legal system through increased expenditures and better trained personnel. Today the Navajo Courts of Indian Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants. No Federal Act has given state courts jurisdiction over such controversies. In a general statute Congress did express its willingness to have any State assume jurisdiction over reservation Indians if the

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State Legislature or the people vote affirmatively to accept such responsibility. To date, Arizona has not accepted jurisdiction, possibly because the people of the State anticipate that the burdens accompanying such power might be considerable."

In support of the conclusion above quoted, the Supreme Court, with other observations, invoked the Act of Congress of August 15, 1953, c.505, Sections 6, 7, 67 Stat. 590, which provides as follows:

"Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any State until the people thereof have appropriately amended their State constitution or statutes as the case may be. . . .The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action obligate and bind the State to assumption thereof."

Arizona has an express disclaimer of jurisdiction over Indian Lands in its Enabling Act, Sec. 20, 36 Stat. 569, and in Art. 20, Fourth, of its Constitution. Cf. Draper v. United States, 164 U.S. 240."

(2) If the answer to (1) is "No", must we subscribe to the procedure set up by Congress; requiring a vote of the people to amend the State Constitution before we can be delegated any authority over them?

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The answer to this question is "Yes".

This answer is predicated upon the analysis made and conclusion reached on question (1) above.

(3) Should such a vote of the people for the amending of the Constitution be favorable, would we assume any obligation not now required by Congress by so doing?

The answer to the above question is "Yes". Should the people amend the Constitution of Arizona, thereupon the State of Arizona would assume obligations towards Indians residing within their reservations which the state is not now obligated to assume. Heretofore the State of Arizona, acting through its legislative department, and by pronouncements of the Supreme Court of Arizona, has assumed jurisdiction over Indians residing upon reservations that now apparently has been dissipated (unless the Constitution of Arizona is amended) by the decision of the Supreme Court of the United States in Williams v. Lee, supra. For illustration see:

(a) Harrison v. Laveen, 67 Ariz. 337, 96 P. 2d 455, wherein it is held that Indians residing on reservations are entitled to vote in state elections under the Arizona Constitution.

(b) Begay v. Miller, 70 Ariz. 380, 222 P.2d 524, wherein it is held that the courts of Arizona are compelled to recognize the judgments of the Navajo Tribal Court, which involved a judgment of divorce between a Navajo Indian and his wife who had been married under a license issued by a clerk of a Superior Court of Arizona.

(c) In re Denetclaw, 83 Ariz. 299, 320 P.2d 697, wherein it is held that State of Arizona does not have jurisdiction over an offense committed by a Navajo Indian while on the reservation involving a violation of a state traffic law.

(4) Was it unlawful delegation of authority for the people to enact the right of suffrage to Indians when by Federal Law and Treaty we have no control over them by law, including our

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election laws, and candidates could be denied entrance for campaign purposes?

As of now the answer is probably "Yes".

The decision of the Supreme Court of the United States in *Williams v. Lee* quoting from the old decision of the Supreme Court of the United States in *Worcester v. Georgia*, 6 Pet. 515, written by Chief Justice Marshall, continues:

"The Cherokee nation . . . is a distinct community occupying its own territory . . . in which the laws of Georgia can have no force, * * *"

Thus we have the anomaly of a nation within a nation insulated from state jurisdiction or authority, except as the Congress has conceded jurisdiction to the several states.

The question then arises whether an Indian residing upon a reservation is a citizen of the state in which the reservation is located, although a citizen of the United States. Therefore, it appears exceedingly doubtful that an Indian residing upon an Indian reservation possesses the qualifications of an elector entitling him to vote at elections conducted pursuant to the Constitution and laws of the State of Arizona, and that doubt extends to the authority of the State of Arizona to conduct and supervise an election upon an Indian reservation.

The consequences of *Williams v. Lee* are calculated to disturb a field of state jurisdiction which Arizona at least had thought was not disputed. The imponderables under that decision are not immediately determinable and will not be determined until the full impact of *Williams v. Lee* engenders incidents of conflicting jurisdiction between the States and Federal Government.

Respectfully yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Assistant Attorney General

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