

December 13, 1951

Op. No. 51-320

Mr. Barry DeRose
County Attorney
Gila County Courthouse
Globe, Arizona

Dear Mr. DeRose:

We have your letter of November 27, 1951, asking the opinion of this office on the following question:

"A local retail liquor dealer has asked me to find out for him what percentage of White Caucasian blood an Indian must have before it is permissible to sell him spirituous liquor."

In answering your question we first call your attention to Article 20, Section 3, Constitution of Arizona, which reads as follows:

"(Sale of intoxicants to Indians.)-- The sale, barter, or giving of intoxicating liquors to Indians and the introduction of liquors into Indian country are forever prohibited within this state."

We fail to find any state law that imposes any penalty for selling liquor to Indians, so we must look to our federal statutes in order that we may answer your question.

Title 18, Paragraph 1154, U.S.C.A., reads as follows:

"Intoxicants dispensed in Indian country.
(a) Whoever sells, gives away, disposes of, exchanges, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters

preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined not more than \$500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than \$2,000 or imprisoned not more than five years, or both. * * *
(Emphasis supplied)

It is to be noted under the above quoted paragraph that the sale of intoxicating liquors to Indians includes mixed bloods. We will cite you the following cases which in our view pass on the question of mixed blood:

State v. Nicolis, 112 F. 269, 270,
61 Wash. 142, Ann. Cas. 1912B, 1033;

United States v. Sanders,
27 Fed. Cas. 950, 951;

United States v. Gardner,
189 F. 690, 692.

On reading Paragraph 1154, Title 18, supra, and the cases cited, we are of the opinion that it is not a question of percentage of white caucasian blood that determines whether it is permissible to sell spirituous liquor to Indians, but is a question as to whether or not the Indians are wards of the Government under charge of an Indian superintendent over whom the Government through its department exercises guardianship.

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Barry DeRose
Gila County Attorney

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Trusting the above answers your question satisfactorily,
we are

Very truly yours,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

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