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Opinion No. 61-24
April 10, 1961

REQUESTED BY: Honorable E. D. McBryde
Pinal County Attorney

OPINION BY: ROBERT W. PICKRELL, The Attorney General

QUESTION: When tribal authorities issue a divorce and place a time restriction of sixty days upon re-marriage, can the divorced person re-marry at the expiration of the sixty day time limit notwithstanding the fact that the one year statutory prohibition of re-marriage has not been fulfilled?

CONCLUSION: Yes.

The pathway in the field of Indian law is not well marked. This is particularly true when we consider the jurisdiction of a tribal court when passing upon matters relating to Indian domestic affairs. Nevertheless, after carefully reviewing available sources on this subject, we have found that our own Supreme Court has considered and passed upon the specific question you have raised. This our Arizona court did in the case of Begay v. Miller, 222 P.2d 624, 70 Ariz. 380, and has provided all courts with a solid foundation upon which future problems touching on the validity of Indian custom marriages and divorces may be answered. This 1950 decision has been favorably cited by our courts many times in support of various jurisdictional points which have since arisen in this general field.

In considering your specific question, we should not neglect to look at the history which has contributed to our conclusion. For example, the State of Arizona through its Constitution, Art. XX, Sec. 4, disclaimed its jurisdictional rights over lands owned and held by any Indian tribe and recognized that they remained subject to the disposition and under the absolute control of the Congress of the United States.

Does this mean that the Federal Government presently has jurisdiction over domestic relations involving members of Indian tribes within their reservations? Students on Indian law have been quick to point out that in the field of domestic relations, the Federal Government has not exerted any affirmative action, assuming it could do so. It is further contended that in the field of domestic relations neither the State nor Federal Government could exert jurisdiction in that the power of the Indian tribes in this field is one which they have exercised over their own people before federal or state laws came into existence. It is argued that their control as to marriages and divorces will continue until their identity and control over their members as a tribe disappears. 17 Am. Jur., Divorce and Separation, Sec. 11; 55 C.J.S., Marriage, §4c; Moore v. Wa-Me-Go, 72 Kan. 169, 83 P. 400; Kobogum v. Jackson Iron Co., 76 Mich. 498, 43 N.W. 602; La Framboise v. Day, 136 Minn. 239, 161 N.W. 529, L.R.A. 1917D, 571; Johnson v.

Johnson's Adm'r, 30 Mo. 72, 77 Am. Dec. 598; Ortley v. Ross, 78 Neb. 339, 110 N.W. 982; Buck v. Branson, 34 Okl. 807, 127 P. 436, 50 L.R.A., N.S., 876; Jones v. Laney, 2 Tex. 342.

The question raised in your letter that remains unanswered is whether in view of the above stated legal principles it is consistent to require the clerk of the Superior Court to issue marriage licenses to reservation Indians. To obtain an adequate answer to this question we must appreciate the policy followed by the Federal Government in wanting to fully integrate our Indian population into our national political, social, and economic culture, once they have been properly equipped (Harrison v. Laveen (1948) 67 Ariz. 337, 196 P.2d 456). The action by the State of Arizona in this field has been consistent with that one expressed above being followed by a Federal Government. Our state has attempted to encourage Indians to marry under state requirements. This is clearly indicated by §25-127, A.R.S., 1956, sub-section B, which provides as follows:

"The clerk of the superior court of the county in which the school or agency is located shall, upon request of the superintendent or agent, issue in blank such licenses as requested and charge them against the superintendent or agent. The clerk shall credit the account with the amounts remitted from time to time, and with the license forms returned unused."

The governing bodies of various tribes within our state have undertaken to pass rules and regulations touching upon the domestic relation activities of their people. The necessity of this affirmative action by the various governing tribal bodies is dubious. Notwithstanding its questionable necessity, it is, nevertheless, very desirable for these Indian leaders to take such steps, for by such action they indicate their awareness of the need for some form of control and records in this important field. The above-quoted statutory provision directs the clerk of the Superior Court upon certain conditions being met to issue marriage licenses. This gives tribal custom marriages and divorces a certain formality which in the past had been lacking. The Handbook of Federal Indian Law, §5, p. 138, commenting on the issuance of state licenses has the following to say:

"The fact that Indians may obtain marriage licenses from state officials does not deprive the tribe of jurisdiction to issue a divorce where the parties are properly before tribal court. In this respect Indians are in the same position as persons who, after marrying under the law of one state, may be divorced under the law of another state or of a foreign nation."

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Pinal County Attorney

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Therefore, it is the conclusion of the Department of Law that a divorce decree handed down by a tribal court involving two tribal Indians, which places a time restriction of sixty days within which period they may not remarry, is valid. Consistent with the above-referred Arizona statutory provisions, these individuals would be entitled to a marriage license to remarry at the expiration of sixty days, notwithstanding the fact that the State of Arizona provides for a one year statutory prohibition to remarriage. It follows that state laws that permit the issuance of marriage licenses to reservation Indians does not deprive the tribal courts of their jurisdiction to issue divorce decrees which may be inconsistent with the one year statutory remarriage prohibition presently found in our laws.

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CLH:lmh

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