

March 14, 1950

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ARIZONA ATTORNEY GENERAL

Will
Barry De Rose
County Attorney
Gila County
Globe, Arizona

Dear Barry:

We have your letter of February 1, in which you state the coroner at Globe is having difficulties about deaths occurring on the Indian Reservation without medical attendance, and ask for an opinion on Chapter 39, Laws of 1949 as pertains to the duties of the coroner under said law. We assume you refer to deaths of Indian wards residing on an Indian reservation and on that assumption, base our opinion.

You state in your letter the reservation physician, acting on advice of the United States Attorney refuses to sign death certificates of Indians dying on the reservation without medical attendance. You also state there is a deputy United States Marshal residing on the reservation who is also a deputy sheriff. You ask for an opinion on the following questions:

"1. Under the above-mentioned Section, is the United States Marshal classified as a peace officer, authorized to make reports and investigations of facts and circumstances surrounding the death of an Indian or any person dying on the Indian Reservation? (I understand Lorna Lockwood gave an opinion some years ago to the Bureau of Vital Statistics, naming the peace officers in the State of Arizona and she did not mention the United States Marshal. This particular United States Marshal at this Reservation holds a Deputy Sheriff's commission without salary).

"2. If a report is made to the Coroner, in our case the Justice of the Peace, can he direct the Indian Reservation physician as medical examiner, to sign the death certificate, and if the examiner refuses to sign, is he in contempt of court?

"3. If, in your opinion, the Indian Reservation medical examiner is not in contempt of court for refusing to sign a death certificate, is the Ex-Officio Coroner, the Justice of the Peace, legally obligated to sign the death certificate for a death occurring on the Indian Reservation? Also, if he is legally obligated to sign the death certificate, does he have to view the body on the reservation in each case where it is a death other than by foul play or homicidal?"

Said Chapter 39, reads as follows:

"DEATH OCCURRING WITHOUT MEDICAL ATTENDANCE. (a) Any person having knowledge of the death of a human being, in a case in which no physician was in attendance at the time of death, shall forthwith report to the nearest peace officer all information in his possession regarding the death and the circumstances surrounding it. The peace officer receiving such report shall immediately make or cause to be made an investigation of the facts and circumstances surrounding the death and report the results thereof to the coroner. The coroner may, and upon request of the county attorney shall, direct the medical examiner

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or any other qualified physician to make such examination of the body as may seem necessary to the person directed to determine the cause of death. The medical examiner or physician making the examination shall promptly report his findings to the coroner and to the county attorney. The coroner may sign the death certificate or may direct the medical examiner to do so. The officer signing the death certificate shall state in the certificate the name of the disease causing death, or if from external causes, the means of death, and whether appearing to be accidental, suicidal, or homicidal, and such information as may be required by the state registrar." (Emphasis supplied)

"(b) The board of supervisors may, upon the request of the county attorney or coroner, appoint and fix the compensation of a medical examiner for examining the body of a person the coroner may believe to have died through criminal means. The person appointed must be a qualified and practicing physician and surgeon." (Emphasis supplied)

Answering your first inquiry, it is our opinion a United States Marshal is not a peace officer as contemplated by Chapter 39. A United States Marshal is a peace officer, but of limited authority. His duties are prescribed by Federal statute. Sections 547 and 549, Title 28, U. S. Code prescribes the duties of the Marshal as follows:

" § 547. Powers and duties generally; supervision by Attorney General. (a) The United States marshal of each district shall be the marshal of the district court and of the court of appeals

when sitting in his district * * *
in the discretion of the respec-
tive courts, be required to attend
any session of the court.

"(b) He shall execute all lawful
writs, process and orders issued
under authority of the United
States, and command all necessary
assistance to execute his duties.

"(c) The Attorney General shall
supervise and direct marshals in
the performance of public duties
and accounting for public moneys.
* * *" (Emphasis supplied)

"§ 549. Power as sheriff. A
United States marshal and his
deputies in executing the laws
of the United States within a
state, may exercise the same
powers which a sheriff of such
state may exercise in executing
the laws thereof." (Emphasis
supplied)

The State Legislature has no control over the official duties of a United States Marshal and cannot prescribe duties to be performed by him in his official capacity as such Marshal. We do not think the Legislature intended to impose additional duties on a United States Marshal over whose official acts it had no control, but it was the intention of the law makers to impose duties on peace officers over which the State had control, that is, peace officers deriving their authority and having their official duties prescribed by state laws. For these reasons, a United States Marshal is not a peace officer within the contemplation of said Chapter.

In your letter you state the Deputy Marshal on the Reservation is also a Deputy Sheriff of your County. In that case he is, as a deputy sheriff, a peace officer within the provisions of the Act, and as such deputy is subject to the provisions of said Chapter.

In answer to your second inquiry, it is our opinion the coroner is not authorized to direct the Indian service

physician, as such, to sign a death certificate, for two reasons, First, the resident physician of the Reservation is a full-time employee of the Federal Government and not necessarily a licensed physician in Arizona; he works under Federal laws and rules and regulations promulgated by Federal departments, and the state cannot prescribe his duties as such resident physician; and, Second, under said Chapter the only person the coroner may direct to sign a death certificate is a medical examiner appointed by the Board of Supervisors in accordance with the provisions of subdivision (b) of said Chapter, or a physician licensed under the laws of Arizona and engaged in the practice in the state. In other words, a physician subject to state control. There is another matter in connection with this question occurring to us, which is that a justice of the peace presides over a court of limited jurisdiction and has only such powers as are provided by law. We are not aware of any authority given a justice of the peace to adjudge any one in contempt of court.

Your third inquiry may be divided into two parts, First, the authority of a justice of the peace under said Chapter to sign death certificates of Indian Wards dying on Indian Reservations. We have concluded a justice of the peace is not required to issue death certificates in such cases under said Chapter. State laws do not apply to Indian Reservations or Indian wards residing thereon, except in so far as Congress may delegate such authority to the state. Indian reservations are under the control of the Federal government. Section 31, Title 25, U.S.C. provides:

"Duties of agent. Each Indian agent shall, within his agency, manage and superintend the intercourse with the Indians, agreeably to law; and execute and perform such regulations and duties, not inconsistent with law, as may be prescribed by the President, the Secretary of the Interior, the Commissioner of Indian Affairs, or the Superintendent of Indian Affairs."

And section 222 of said Title is as follows:

"Authority to remove person from reservation. The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person being therein without authority of law, or whose presence within the limits of the reservation may, in the judgment of the commissioner, be detrimental to the peace and welfare of the Indians; and may employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person."

These sections and regulations promulgated thereunder show that reservations are under federal control. If an Indian ward, or a non-Indian, kills a resident Indian ward on the Reservation, the State courts lack jurisdiction to try him for the offense.

Cohen's Handbook of Federal Indian Law, states these general rules:

"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,

* * * * *

"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 so 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 authority then states:

"The most important field in which state laws have been applied to Indians by congressional fiat is the field of inheritance.

* * * * *

"A second field in which state law has been extended to Indian reservations by Congressional fiat is the realm of laws covering 'inspection of health and educational conditions' and the enforcement of 'sanitation and quarantine regulations' and the enforcement of 'sanitation and quarantine regulations' as well as 'compulsory school attendance.' By the Act of February 15, 1929, Congress

authorized the enforcement of such laws upon Indian reservations by state officials 'under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.'

A third body of state laws is extended over Indian reservations by section 289 of the Criminal Code which makes offenses by non-Indians against Indians and by Indians against non-Indians punishable in the federal courts in accordance with state laws existing at the time of the federal enactment in question.

It will be noted that the foregoing statute is expressly made inapplicable to any offense committed by and against an Indian, by the terms of section 218 of title 25 of the U.S. Code.

Apart from these three fields there has been no general congressional legislation authorizing the extension of state laws to Indians on Indian reservations."

You will note the matters covered by said Chapter 39 do not come within any of the three categories mentioned above. We do not know of any Federal statute authorizing the states to keep records of vital statistics of Indian wards dying on an Indian Reservation, or for the issuance of death certificates in such cases. Congress, in our opinion, has legislated on this subject to a certain extent by Section 133, Title 25, U.S.C., which is as follows:

"Rolls of Indians entitled to supplies. For the purpose of properly distributing the supplies appropriated for the Indian Service, it is made the duty of each agent in charge of Indians and having supplies to distribute, to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance."

and has covered the field by rules and regulations of the Federal government on the subject. To comply with the provisions of section 133 the Superintendent of the Reservation would of necessity have to keep a record of the deaths of Indian wards on a Reservation and it is of no concern of state authorities as to deaths of such wards dying on the reservation, either from natural causes or by unlawful means, and the same applies as to the issuance of death certificates in such cases. There could be cases of deaths on Indian reservations in which state authorities might be interested, for instance, if a non-Indian killed a non-Indian on the reservation, the state courts could try him for such offense and might be interested in an inquest on the body, and the issuance of a death certificate. In such a case a death certificate could issue in accordance with the provisions of said Chapter, or if a non-Indian dies of natural causes on the reservation, the provisions of said Chapter 39 should be followed.

The second part of your third inquiry as to whether it is necessary for the coroner to view the body of a person dying on an Indian reservation without medical attendance will depend on circumstances in each case. It is necessary for the coroner to view a body only where he is determining whether to hold an inquest or does hold one. You will note said Chapter 39 does not require the coroner to view the body. As to Indian wards dying on their reservation, it is unnecessary for the coroner acting under state authority to do anything, but as to non-Indians dying on such reservation without medical attention a different situation might be presented. If a non-Indian is killed or commits suicide on a reservation or meets death under circumstances such as affords a reasonable ground to suspect foul play, it is necessary for the coroner to hold an inquest and to do so he must view the body as required by Section 44-3401, which reads as follows:

"When a coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he shall go to the place where the body is, and forthwith summon not less than six (6) nor more than twelve (12) persons qualified by law to serve as jurors, to appear

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before him forthwith at the place where
the body of the deceased is, to inquire
into the cause of the death."

If a non-Indian dies of natural causes on a reservation without medical attention, it is not necessary to hold an inquest or for the coroner to view the body. In such case the coroner could direct a medical examiner appointed by the Board of Supervisors, or a qualified licensed physician to examine the body and make a report to the coroner and the coroner or the medical examiner could in such case issue a death certificate as provided in said Chapter 39.

We trust this answers your questions.

Very truly yours,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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