

October 24, 1949

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ARIZONA ATTORNEY GENERAL

Mr. F. Preston Sult  
County Attorney  
Pinal County  
Florence, Arizona

Dear Mr. Sult:

Your letter of September 27 in reference to state prosecution of Reservation Indians was received. We delayed answering awaiting presidential action on the Navajo-Hopi Rehabilitation Act. Since the President has vetoed the measure, we will answer your inquiry, which is as follows:

"Recently the State Board of Public Welfare has been sending a number of Indians to this office for complaints under Chapter 70, Senate Bill 96, in regard to non-support. It looks as though, if this matter continues, our whole jail might be filled up with Indians.

There is some doubt in my mind as to the jurisdiction of the State Courts over reservation Indians in crimes committed solely by Indians against other Indians. I would appreciate very much your opinion as to whether or not our State Courts have jurisdiction over crimes committed on the Indian Reservation by Indians against other Indians, and especially in relation to the above mentioned act."

After an investigation of the authorities, we have concluded the State courts do not have jurisdiction to prosecute a Reservation Indian for any crime committed against another Reservation Indian on an Indian Reservation. Section 4, Article 20 of our Constitution is as follows:

"(Indian lands.)--The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the congress of the United States."

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Section 20 of the Enabling Act is substantially the same. When the lands in an Indian Reservation are subjected to the exclusive jurisdiction of the laws of the United States, it can well be said that the Indians residing thereon under Government supervision are also under the same jurisdiction. It is generally recognized that Indian Reservations are under the jurisdiction of the Federal Government and are controlled by the laws of the United States, 42 Am. Jur. p. 569.

Section 44-1105 ACA 1939 reads in part as follows:

"Every person is liable to punishment by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States; \* \* \*"

Section 1152, Title 18, U.S.C. is as follows:

"Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States,

except the District of Columbia,  
shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

Section 1151, Title 18, U.S.C., defines Indian country as follows:

"The term 'Indian country', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same."

Said Section 1152 is a consolidation of what was formerly Sections 217 and 218, Title 25, U.S.C., with a slight revision. The second paragraph of said section is at first bluish confusing. However, the Courts have construed this section to mean that as to offenses enumerated in Section 1153 or any other act condemned by act of Congress and committed on an Indian Reservation, the Federal Courts have

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exclusive jurisdiction to prosecute for such offenses. But as to any other wrong doing by an Indian against another Indian on a Government Reservation and not made a crime by United States law, the matter of the punishment of such wrong doing is left to tribal courts or council according to Indian custom. United States v. Quiver, 241 U.S. 602; 60 L. Ed. 1196.

42 C.J.S., p. 790, states the general rule as follows:

" \* \* \* Offenses committed by one Indian against the person or property of another Indian, on an Indian reservation, and as to which specific provision is not made by statute, are not punishable under the laws of the United States, but are to be dealt with according to Indian tribal customs and laws, \* \* \* "

On page 794 of the same work, this general rule is announced:

"Jurisdiction over crimes committed by one Indian against another, or within Indian country or reservations, is to be determined by controlling statutory and treaty provisions, and in the absence of such authorization a crime committed by one Indian against another in the Indian country is a matter for regulation by tribal custom or mores and was not within the jurisdiction of either federal or state courts.  
\* \* \* "

Under the sections of the Federal statutes quoted and the authorities herein referred to, exclusive jurisdiction is vested in the Federal Government over Indians residing on reservations and under said Section 44-1105 of our Code, the State courts have no jurisdiction to prosecute a Reservation Indian for a crime committed on an Indian

Reservation against another Reservation Indian.

Aside from the statutes cited there is authority that State courts have no jurisdiction in such cases. 42 Am. Jur. p. 574, states the rule as follows:

" \* \* \* The state courts, therefore, have no jurisdiction of crimes committed by an Indian within the limits of an Indian reservation, and the Federal jurisdiction is not affected by the fact that the Indian committing the crime has been granted citizenship.  
\* \* \*"

We have had no expression from our Supreme Court on this question, but in the case of Harrison v. Haveen, 67 Ariz. 337, 196 P. (2d) 456, speaking of the Indians' political status in Arizona, the Court said:

"It would be idle to contend that tribal Indians do not still occupy a peculiar and unique relationship to the federal government. They are, except for a few civilized tribes, still regarded and treated by the United States as requiring special consideration and protection. For nearly a century they were treated as separate 'nations' and the legal rights of the members were fixed by treaty. Many of these treaties are still in force and of recognized validity. However, Congress stopped making such treaties in the year 1871, but since then more than four thousand distinct statutory enactments have been passed by the Congress comprising what is commonly referred to as 'Indian Law'.  
\* \* \* \* \* Generally speaking tribal Indians are not subject to State law. The exemption is particularly true in the fields of criminal law and taxation.

\* \* \* However, it should be noted that the Federal courts have held that the congressional power over Indians is not diminished by the grant of citizenship. United States v. Waller, 243 U.S. 452, 459, 37 S. Ct. 430, 61 L. Ed. 843. See also 19 Cal. Law Review 513. \* \* \*

A leading case on this subject is State v. Campbell, 53 Minn. 354; 55 N.W. 553; in the opinion in that case we find this language:

"\* \* \* There is no decision of the federal courts that a state can, even in the absence of a restriction in a treaty, or in the act admitting the state into the Union, extend its laws, either criminal or civil, over tribal Indians residing under the care of the general government upon a reservation set apart by it for that purpose. It was held in Worcester v. Georgia, supra, that the state could not extend its laws, civil or criminal, over the Cherokee tribe. \* \* \* By the Act of 1885, presumably, congress has enumerated all the acts which in their judgment ought to be made crimes when committed by Indians in view of their imperfect civilization. For the state to be allowed to supplement this by making every act a crime on their part which would be such if committed by a member of our more highly civilized society would be not only inappropriate, but also practically to arrogate the guardianship over those Indians which is exclusively vested in the general government. \* \* \*

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We do not believe Chapter 70, Laws of 1949, does, or could change the general rule established by the statutes and decisions above cited.

{ Indian Reservations being under the exclusive jurisdiction of the Federal Government and the Indians residing thereon being wards of the Federal Government, it is our opinion State courts do not have jurisdiction to prosecute a Reservation Indian for nonsupport of his minor Indian children residing on an Indian Reservation, or for any other crime committed on such reservation by a Reservation Indian against another Reservation Indian. }

Very truly yours,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General

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