

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

October 6, 1954
Opinion No. 54-146

TO: The Honorable Barry DeRose
Gila County Attorney
Courthouse
Globe, Arizona

RE: Authority of the state of Arizona
to regulate the speed of non-Indians
on those highways in the state that
are within Indian reservations.

QUESTION: Does the state of Arizona have any
legal authority to regulate the speed
on the highways on the reservations
with reference to non-Indians?

In answering the above question, we must assume that the above-mentioned "highways" are state highways and the following opinion will be based on that assumption.

There is no question that the state of Arizona has full and complete jurisdiction over non-Indians for acts committed on the reservation so long as Indians are not involved.

This proposition has been succinctly set forth in Cohen's Handbook of Federal Indian Law at page 121, wherein it is stated:

"F. Non-Indian in Indian Country Engaged
in Non-Federal Transaction.

The mere fact that the locus of an event is on an Indian reservation does not prevent the exercise of state jurisdiction where the parties involved are not Indians and the subject matter of the transaction is not a federal concern."

It being apparent then that, if Indians are not involved, the state has jurisdiction over the acts of non-Indians within a reservation, still a stronger case exists for the state to control

where the state has been granted an easement across the reservation for highway purposes.

This question was discussed in the case of GREYHOUND-PACIFIC LINES vs SUN VALLEY BUS LINES, (1950) 70 Ariz. 65, 216 P. 2d 404, in determining the need of a common carrier for a certificate of convenience and necessity to operate over highways that cross Indian reservations. On this point the court stated:

"* * * It seeks to justify these operations by; (1) asserting that the roads in question are all on the Sacaton Indian Reservation and that inasmuch as there is no evidence in the record that the Secretary of the Interior ever granted permission to the State or County to construct such highways the corporation commission has no jurisdiction over same, (In other words, defendant is saying that it is no affair of the state if the defendant wants to operate over this highway.); (2) its claim that they have been operating under a permit from the tribal chief for which a fee of \$25 per year is paid. In answer to the first contention we are entitled to presume that the State and County highway officials did their duty in procuring the necessary consent for the construction of these highways before spending public moneys thereon. The defendant as a common carrier being under the jurisdiction of the Commission may not operate as such carrier within the state without having a permit covering each specific operation conducted by it, Section 66-506, A.C.A. 1939, and the carrier may not deviate from the route prescribed. As more than a fourth of the state's area lies on Indian Reservations there is not a through road of any consequence in the state that does not cross one or more of such reservations. If defendant's contention were upheld our laws regulating common carriers would be wholly ineffective if not a nullity. The tribal chief (if any there be) have no more authority over common carriers than any other private citizen.* * *"

In the case of KONAHA vs BROWN, (1942) 131 Fed. 2d 737, the Circuit Court of Appeals discussed the jurisdiction of the state of

Wisconsin over Indians for acts committed on state highways within an Indian reservation. The Indian who was the subject matter of the opinion was arrested on a criminal complaint charging him with manslaughter - killing by the negligence of a drunken driver on a state highway. As to the jurisdiction of the state over this defendant, the court stated:

"* * * It is true that the grant of a right to maintain a highway must carry with it certain implications respecting the protection of said highway against depredations. If, however, there were any implications arising therefrom which would subject the Indian members to the Wisconsin penal statutes, they would be limited to such penal provisions as served to protect and preserve the highway, such as speeding, impairing the highway, etc.

Whether there was an implied grant of jurisdiction to Wisconsin so as to permit adequate protection of its highway by state statutes, we need not determine. No such case is before us. The case before us is that of manslaughter - killing by the negligence of a drunken driver. The fact that it occurred on the highway does not make its punishment essential or vital to the building or maintenance of the highway. Moreover, it conflicts with the action of Congress which has dealt with the crime of manslaughter by Indians on reservations."

* * * * *

A close analysis of the above-quoted opinion reveals that the court felt that the state would have jurisdiction, even over an Indian (Although we don't attempt to answer that question) if it were to protect against such offenses that were detrimental to the highways, such as speeding, etc. The obvious result would then be that a non-Indian speeding on a state highway on the Indian reservation would unquestionably come within the state's right to regulate and control.

It is, therefore, the opinion of this office that the state of Arizona may regulate the speed of non-Indians over the state highways located within an Indian reservation.

ROSS F. JONES
The Attorney General

RODERIC M. JENNINGS
Assistant to the
Attorney General