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4 JUN 11 1953

4 MEMORANDUM FOR THE ATTORNEY GENERAL

4 Re: Enforcement of criminal law on Indian reservations 6/11

This is in response to your memorandum of May 7, 1953, concerning the possibility of improving enforcement of criminal law on Indian reservations - a matter in which the Governor of Montana is apparently interested.

Crimes involving Indians and Indian reservations can be divided for purposes of discussion into the following categories: (1) Crimes in Indian country by Indian against Indian, (2) Crimes in Indian country by Indian against non-Indian, (3) Crimes in Indian country by non-Indian against Indian, (4) Crimes in Indian country by non-Indian against non-Indian, and (5) Crimes in which locus is irrelevant. Except as otherwise provided, the term "Indian country" as used in Chapter 53 of Title 18, United States Code, relating to Indians, is defined by section 1151 to mean: (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-way running through the same."

1. Crimes in Indian country by Indian against Indian. Under sections 1153 and 3242 of Title 18, U. S. C., sometimes referred to as the "Ten Major Crimes Act", Federal courts have jurisdiction of certain specified offenses committed by any Indian "against the person or property of another Indian or other person". The offenses specified in that section are "murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson,

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44/1/ See: Cohen, Handbook of Federal Indian Law (1941), p. 358 et seq.

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burglary, robbery, and larceny within the Indian country". Federal courts also have jurisdiction over the ordinary Federal crimes applicable throughout the United States such as counterfeiting, smuggling, and offenses relating to the mails. Other offenses committed by Indians against Indians are ordinarily subject to the jurisdiction of "Courts of Indian Offenses", otherwise known as "tribal courts".

The Department of the Interior has administrative control over Indians and Indian reservations, and has issued regulations which are applicable to all reservations on which tribal courts are maintained (25 C.F.R. 161). Included in these regulations is a "Code of Indian Tribal Offenses" covering numerous offenses such as assault, disorderly conduct, reckless driving, gambling, etc. However, tribal courts do not exist on all reservations, and I am informed by the Criminal Division that on some reservations there is a gross lack of law enforcement and that Indians can commit many offenses with impunity.

2. Crimes in Indian country by Indian against non-Indian. The Federal courts also have jurisdiction over offenses committed by an Indian against non-Indians. Not only is section 1153 specifying the ten major crimes applicable to such cases, but also section 1152 (formerly 25 U.S.C. 217) which provides that "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". I am advised by the Criminal Division that the words "sole and exclusive" as used in this section have been construed not as giving the Federal Government exclusive jurisdiction over the Indian country, but as extending to the Indian country Federal penal laws which are applicable to places over which the United States has exclusive jurisdiction. In re Wilson, 140 U. S. 575; Donnelly v. United States, 228 U. S. 243. Offenses committed by one Indian against the person or property of another Indian are expressly excluded from the application of this section.

3. Crimes in Indian country by non-Indian against Indian. Under the first paragraph of section 1152, Federal courts have jurisdiction not only of offenses committed in the Indian country by an Indian against a non-Indian, but also of those committed by a non-Indian against an Indian. United States v. Chavez, 290 U. S. 357; Williams v. United States, 327 U. S. 711.

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Id., p. 147; see also: Bailey v. United States, 47 F. (2d) 702 (C.C.A. 9, 1931).

4. Crimes in Indian country by non-Indian against non-Indian. Jurisdiction of offenses committed by non-Indians against non-Indians in the Indian country is in the state and not the Federal courts. New York ex rel Ray H. Martin, 326 U. S. 496.

5. Crimes in which locus is irrelevant. There are certain offenses relating to Indians which are subject to Federal jurisdiction regardless of the locus of the offense such as the purchase of livestock branded with the I D or reservation brand (18 U.S.C. 1157), in some instances, the sale of liquor to Indians (18 U.S.C. 1154), and the making of prohibited contracts with Indian tribes (18 U.S.C. 437). With respect to the Indian Liquor Laws (18 U.S.C. 1154-56, 3113, 3488, 3618 and 3619), I am advised by the Criminal Division that violations are investigated by agents of the Bureau of Indian Affairs and are reported directly to United States Attorneys for prosecution, that the Department has received very few complaints with respect to the enforcement or lack of enforcement of such laws, and that the number of prosecutions for violations thereof is not great.

The Criminal Division has suggested that the enforcement of criminal law on Indian reservations might be improved by (1) the establishment by the Department of the Interior of tribal courts on all Indian reservations, and (2) by the enactment of Federal legislation giving the states either concurrent or exclusive jurisdiction over offenses committed by or against Indians. With respect to the latter suggestion, it would appear that since 1940, five separate laws have been enacted, each conferring jurisdiction on a different state over offenses committed by or against Indians. They are as follows:

1. Act of June 8, 1940 (54 Stat. 249), with respect to offenses committed on Indian reservations in Kansas.

2. Act of May 31, 1946 (60 Stat. 229), with respect to offenses committed on the Devils Lake Indian Reservation, North Dakota.

3. Act of June 30, 1948 (62 Stat. 1161), with respect to offenses committed on the Sac and Fox Indian Reservation, Iowa.

4. Act of July 2, 1948 (62 Stat. 1224), with respect to offenses committed on Indian reservations in New York.

5. Act of October 5, 1949 (63 Stat. 664), with respect to offenses committed on the Agua Caliente Reservation, California.

The act with respect to Kansas now constitutes section 3243 of Title 18, U.S.C., and the act with respect to New York appears as section 232 of Title 25, U.S.C. The acts relating to North Dakota,

Iowa, and California, which are limited to particular reservations, do not appear in any of the titles of the United States Code.

Since the enactment of the five statutes listed above, numerous bills have been introduced in the Congress to confer similar criminal jurisdiction on other states. A number of such bills have been introduced in the present Congress. Bills to confer jurisdiction on the State of Montana with respect to offenses committed on Indian reservations within that State were introduced in the Second Session of the 82d Congress by Senator Ecton (S. 907) and by Representative D'Ewart (H.R. 3235), but they were not referred to this Department for comment nor were they reported out by the committees to which they were referred. It is possible that the failure of the Congress to act on the bills relating to Montana was due to the pendency at that time of a bill (H.R. 6036) which was designed to bring together under Title 18 of the United States Code existing legislation on the subject and to cast it in a form which would permit, by subsequent legislation, additional areas to be added without the necessity of reenacting the substantive provisions of the existing statutes for each additional state or reservation. This bill was sponsored by the Department of the Interior. In transmitting it to the Speaker of the House, the Acting Assistant Secretary of the Interior said, in part (H. Rept. 2337, 82d Cong., 2d sess., pp. 5-6):

10 "This Department, after consulting the Indian tribes and the States concerned, intends to submit to the present Congress proposed bills to confer on additional States jurisdiction over offenses committed by or against Indians on Indian reservations in those States. Before the submission of such proposals, the enclosed draft bill is recommended for enactment in order to bring together in one place the legislation on this subject that is now in effect, and to put it in a form that lends itself to extension to additional States or reservations as the circumstances warrant. In furtherance of this purpose, the draft bill continues State criminal jurisdiction over Indians within the areas covered by existing legislation, but is cast in a form that will permit additional areas to be added to the list by subsequent legislation without reenacting the substantive provisions of the bill for each additional State or reservation."

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10 "The proposed bill would codify the existing legislation conferring criminal jurisdiction on particular States as a part of chapter 53 of title 18, United States Code.

9 That is the chapter dealing with criminal offenses committed by or against Indians. The present statute with respect to Kansas is now codified in chapter 211 of title 18, which deals with the jurisdiction and venue of the Federal courts. The subject matter of the legislation relates to the jurisdiction of State courts, rather than Federal courts, and I believe the preferable place for codification is chapter 53. When the legislation is so codified, the separate acts should be repealed. Section 3 of the proposed bill contains such a repeal provision. In the case of the act with respect to California, the repeal takes the form of deleting the reference to criminal jurisdiction and leaving unaffected the provisions of the act dealing with civil jurisdiction. Only in the case of California are criminal and civil jurisdiction dealt with in the same act.

10 "It is my belief that the enactment of the enclosed bill would serve the highly desirable purpose of codifying the present legislation regarding State criminal jurisdiction over Indians, in a form that will facilitate the extension of criminal jurisdiction over Indians to other States, as the States and the Indians become prepared for such action from time to time."

It may be noted in passing that the bill would not have deprived the Federal courts of jurisdiction over offenses now defined by Federal law, and that this Department in reporting on the bill raised certain technical questions of law which, however, were not considered fatal by the House Committee on the Judiciary in its report on the measure. In any event, the bill failed of passage. It is possible, however, that the Department of the Interior would prefer to have such legislation enacted before undertaking to sponsor or support bills conferring jurisdiction on additional states with respect to offenses committed on Indian reservations.

While I am not familiar with conditions on the reservations in Montana, it would appear from the foregoing that the responsibility for taking remedial action, whether it be the establishment of additional tribal courts or the initiation of legislation, is primarily that of the Department of the Interior. You may therefore wish to advise the Governor to submit his problem to Interior as an initial step toward the improvement of law enforcement on reservations located in Montana.

4 J. Lee Rankin
Assistant Attorney General
Office of Legal Counsel