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INDIANS: Law enforcement authority of Indian tribes within reservations

Receipt of federal grant funds by Indian tribes

Cooperation between Indian law enforcement authorities and state and local police agencies

LAW ENFORCEMENT: Jurisdiction of Indian police forces

Authority of state and local police officers to arrest for federal crimes

POLICE OFFICERS: Authority of Indian police officers

Authority of state police officers to arrest for federal crimes

Tribal law enforcement authorities have exclusive jurisdiction over Indians who violate tribal ordinances on reservation land.

State law enforcement authorities have jurisdiction over non-Indian persons charged with offenses against state law on Indian reservations where Indians and Indian property are not involved.

Federal law enforcement officers, including members of the tribal law enforcement unit deputized as federal marshals, have jurisdiction over Indians and non-Indians committing federal offenses on reservation land.

In emergencies state law enforcement authorities who witness federal offenses may arrest and charge Indians with federal violations committed on Indian reservations.

Tribal police forces may receive federal grant funds.

State police agencies may cooperate with tribal police forces.

Opinion No. 4803 October 29, 1973.

Col. John R. Plants
Michigan State Police
East Lansing, Michigan

You have requested my opinion upon the following questions:

(1) What authority do the Indian tribes have to establish police forces within the boundaries of their reservations?

(2) To what extent can an Indian tribe with its own police force receive grant funds from the Federal government?

(3) To what extent can a reservation police force cooperate with other police agencies?

An attempt will be made here to deal with these questions in practical terms with special emphasis on the responsibilities of and restrictions on state authorities in this field.

1. AUTHORITY OF INDIAN TRIBES TO ESTABLISH POLICE FORCES AND JURISDICTION THEREOF

It has long been held that under the U. S. Constitution, the Federal government has complete authority over Indian affairs. In the words of Chief Justice Marshall:

> "* * * That instrument confers on congress the powers of war and peace; of making treaties, and of regulating commerce with

> foreign nations, and among the several states, and *with the Indian tribes*. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions. . . ."
> (Emphasis in the original) *Worcester v Georgia,* 31 U.S. (6 Pet.) 515, 559

Pursuant to this authority Congress has consistently regulated matters concerned with the Indian tribes. One of the basic enactments in this field is the Wheeler-Howard Act, 48 Stat. 984, 25 USC 461 *et seq.* One of the purposes of this enactment was

> "to stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations." Sen. Rept. No. 1080, 73d Cong., 2d sess. [May 10 (Calendar day, May 22d), 1934], as quoted in *Handbook of Federal Indian Law,* Felix S. Cohen, page 84.

Under the Wheeler-Howard Act it is provided that tribes may organize and adopt a constitution and by-laws at a special election authorized and called by the Secretary of the Interior. A constitution so adopted may vest in the constitutionally created authority "all powers vested in any Indian tribe or tribal council by existing law," together with certain powers specifically mentioned in the Act. It is further provided that the constitutions and by-laws adopted by the various Indian communities must be approved by the Secretary of the Interior and that when so ratified and approved they are revocable only after an election open to the members of the tribe. 25 USC 476.

It is perhaps debatable whether a constitution adopted pursuant to the Wheeler-Howard Act represents a grant of authority to Indian tribes or a recognition by the U. S. Government of authority inherently existing in the tribe. This question needn't detain us however because under either theory it is clear that we must look to the constitution of the tribe for a statement of its rights and powers. In the State of Michigan four tribal groups have organized and adopted constitutions pursuant to the Wheeler-Howard Act of 1934. In the area of law enforcement the statements of power contained in Article 6 of the Constitution and By-Laws of the Keweenaw Bay Indian Community may be used as an example of the kinds of powers confirmed as existing in the tribe by these constitutions. Under this provision:

> "Sec. 1. The tribal council [of the Keweenaw Bay Indian Community] shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all expressed restrictions upon such powers contained in this Constitution and attached By-Laws:
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> * * *
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> (c) to negotiate with the Federal, State and local government on behalf of the community and to advise and consult with the representatives of the departments of the government of

the United States on all matters affecting the affairs of the Keweenaw Bay Indian Community.

* * *

(i) to promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for taxes, assessments, or license fees upon non-members doing business with the reservation, or obtaining special rights or privileges, and such ordinances have been approved by a referendum of the Keweenaw Bay Indian community.

* * *

(l) to promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Keweenaw Bay Indian community, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian court, and a definition of its powers and duties.

* * *

(n) to promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals and general welfare of the Keweenaw Bay Indian community, by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting non-members shall be subject to review by the Secretary of the Interior.

* * *

(u) to adopt resolutions or ordinances to effectuate any of the foregoing powers.

* * *

"Sec. 3. The Council of the Keweenaw Bay Indian community may exercise such further powers as may in the future be delegated to it by the Federal government, either through order of the Secretary of the Interior, or by Congress, or by the State Government, or by any member of the Keweenaw Bay Indian community."

Under provisions such as these, it is apparent that the Keweenaw Bay Indian community is empowered to undertake a wide range of reservation law enforcement activities. This authority has been formally recognized by the Secretary of the Interior as existing in all four federally chartered Indian communities in Michigan. According to a statement of the Secretary published in 38 *Federal Register* on May 25, 1973, p. 13758, the Bay Mills, Hannahville, Keweenaw Bay, and Saginaw-Chippewa Indian communities are recognized as possessing authority to perform the following functions:

(1) to employ tribal police
(2) to establish a tribal court
(3) to adopt a tribal law and order code
(4) to undertake correction functions
(5) to undertake programs aimed at preventing adult and juvenile delinquency

In addition, all these communities except the Bay Mills community are recognized as authorized "to undertake adult and juvenile rehabilitation programs."

In specific answer to your first question it is clear then that the four federally chartered Indian tribal organizations in Michigan have ample authority to employ tribal police and establish a tribal police force.

A word should be said, however, concerning the respective law enforcement responsibilities of tribal, state, county and local law enforcement units in respect to offenses committed within the boundaries of the reservations. It is clear that, depending on the nature of the crime, either the tribe itself or the Federal Government has responsibility for offenses committed by Indians within the boundaries of an Indian reservation. Therefore, under ordinary circumstances, such offenses should be of no concern either to State courts or to State or local law enforcement agencies. However, this does not by any means eliminate the role of State law enforcement agencies in keeping order on Indian reservations. According to decisions of the U. S. Supreme Court, the State remains responsible for law enforcement activities directed at offenses by non-Indians against non-Indians within the boundaries of a reservation. *United States* v *McBratney,* 104 U.S. 621, 26 L Ed 869 (1881); *Draper* v *United States,* 164 U.S. 240, 17 S Ct 107, 41 L Ed 419 (1896); *New York ex rel Ray* v *Martin* 326 U.S. 496, 66 S Ct 307, 90 L Ed 261 (1946). In the words of Felix S. Cohen, author of the *Handbook of Federal Indian Law,* a classic text on the subject:

> "Ordinarily offenses committed by a non-Indian against a non-Indian in the Indian country are of no concern to the Federal government and are punishable by the state. For purposes of criminal jurisdiction, where Indians are not involved, an Indian reservation is generally considered to be a portion of the state within which it is located." *Handbook of Federal Indian Law,* Felix S. Cohen, p. 365.

In addition, it must be recognized that many offenses committed by Indians on Indian reservations are Federal offenses rather than tribal offenses. Under 18 USC 1152, it is provided that:

> "Except as otherwise generally 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 . . . 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 an offense in the Indian country who has been punished by the local law of the tribe . . ."

Under this provision it is clear that many offenses committed by Indians on Indian reservations, particularly those against non-Indians, are Federal offenses. Moreover, under 18 USC 1153:

> "Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious

bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. . . ."

Thus, a wide variety of crimes, particularly felonies, constitute Federal offenses when committed by Indians on the land of an Indian reservation.

The fact that the federal district court has exclusive jurisdiction to try offenses against the laws of the United States, however, does not necessarily impede state and local officials from assisting in their enforcement. In fact, 18 USC 3041 specifically authorizes such cooperation in the following terms:

"For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States magistrate, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned or released as provided in chapter 207 of this title, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such court, together with the recognizances of the witnesses for their appearances to testify in the case.

"A United States judge or magistrate shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge him from arrest."

However, as to this provision [18 USC 3041], 8 Moore's Federal Practice § 3.103(1), pp 3, 4, notes:

"* * * Actually, it is intended that these local officers act primarily in emergencies; very few in fact conduct an appreciable number of federal commitment proceedings.

* * *"

In *United States* v *Bumbola,* 23 F2d 696, 698 (DC ND NY 1928), it was held:

"* * * The court is of the opinion that any peace officer of the state has not only the right, but the duty, to arrest without a warrant any person committing an offense against the laws of the United States in his presence."

In *Bircham* v *Commonwealth,* 238 SW 2d 1008 (1951), the court cited with approval the decision in *U.S.* v *Bumbola, supra,* by stating:

"* * * In United States v Bumbola [supra] . . . the court held that it is the duty of a peace officer of a state to arrest without a warrant any person committing an offense against the laws of the United

States in his presence. Thus, it will be seen that appellant, for quite a while previous to, and at the time of, his apprehension on First Street, and continuously thereafter, was an overt action in the commission of a felony in the presence of the officers attempting to take him in custody. It was not only their right, it was their duty to arrest him . . ." [at 1016]

It has also been held in *Whitlock* v *Boyer,* 271 P2d 484, 77 Ariz 334 (1954), that municipal police officers have the authority to arrest for federal crimes.

Under these authorities it is clear that Michigan State Police and other Michigan peace officers have the right and duty in emergencies to arrest persons committing Federal offenses in their presence on an Indian Reservation; it being understood that trial jurisdiction over the offense rests exclusively with the Federal district court.

To summarize then:

(1) Tribal law enforcement authorities have exclusive jurisdiction over Indians committing offenses against tribal ordinances on reservation land.

(2) State law enforcement authorities have jurisdiction over non-Indian persons charged with offenses against state law on Indian reservations where Indians and Indian property are not involved.

(3) Federal law enforcement officers, including members of the tribal law enforcement unit deputized as federal marshalls, have jurisdiction over Indians and non-Indians committing federal offenses on reservation land.

(4) In emergencies State law enforcement authorities who witness Federal offenses may arrest and charge Indians with Federal violations committed on Indian reservations.

2. RECEIPT OF FEDERAL GRANT FUNDS BY TRIBAL POLICE FORCE

As has been noted above the four Federally recognized Indian communities in Michigan have been organized pursuant to constitutions granted in accordance with Federal law and with the approval of the Federal government. As such, they may receive Federal grant funds or other Federal funds exactly to the extent that the Federal government is prepared to make such funds available. Grants have already been made to certain of the reservations under the Law Enforcement Assistance Administration for the purpose of enabling them to establish law enforcement capacities. Further aid along this line is to be expected and is fully authorized under the enactments establishing the Law Enforcement Assistance Administration.

3. COOPERATION BETWEEN RESERVATION POLICE FORCES AND OTHER POLICE AGENCIES

A duly established Indian reservation police force is in every respect a fully authorized and legitimate police unit. State, county and local police forces may freely enter into inter-agency arrangements with Indian police units and may engage in other kinds of cooperative efforts which may seem advisable and practicable.

Under MCLA 28.6; MSA 4.436 it is the right and responsibility of the Director of State Police to:

> "* * * formulate and put into effect plans and means of cooperating with the local police and peace officers throughout the state for the purpose of the prevention and discovery of crimes and the apprehension of criminals; and it shall be the duty of all such local police and peace officers to cooperate with such commissioner in such plans and means.* * *"[1]

Under this provision the Department of State Police may take the initiative in coordinating the efforts of local, county, and state law enforcement units to cooperate with the new tribal forces. Under its Federal charter (See e.g. Constitution and By-Laws of the Keweenaw Bay Indian community, Art 6, sec 1(c) *supra*) the Keweenaw Bay Indian community tribal council has authority to negotiate cooperative agreements with state law enforcement authorities, which may be subject to approval by the department of interior. If the other tribal councils have comparable charter authority, they may also negotiate such cooperative agreements. Such measures as seem advisable to the department including but not limited to cross-deputization of officers and the rendering of communications assistance may be offered by the Department of State Police to a tribal police department to the same extent that such assistance is made available to local departments generally.

FRANK J. KELLEY,
Attorney General.

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UNIFORM COMMERCIAL CODE: Effect of filing of Continuation Statement

A continuation statement continues the effectiveness of financing statements filed pursuant to the Uniform Commercial Code for a period of 5 years from the expiration of the original financing statement. Succeeding continuation statements timely filed continue the effectiveness of the original statement for a period of 5 years from the date of expiration of the extended original financing statement.

Opinion No. 4800 November 14, 1973.

Hon. Frederick L. Stackable
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

> Whether the filing of continuation statements extend the original statement for 5 years after the last date to which the filing of the original statement was effective?

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[1] The statute vested power in the state police commissioner. This power was transferred to department of state police by MCLA 16.253; MSA 3.29 (153), and is to be exercised by the director of the department of state police as its head, MCLA 16.251; MSA 3.29 (151)