

Opinion No. 53-5690

February 27, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. L. W. Leibrand Chairman New Mexico Public Service Commission P. O. Box 561 Santa Fe, New Mexico

{*82} This is in answer to your request for an opinion upon the question of whether the Public Service Commission has jurisdiction under the Public Utility Act, Section 72-301 et seq, N.M.S.A., 1941 Compilation, as amended to regulate Indians operating gas distribution systems wholly on Indian Reservations.

The facts as they appear from your letter dated February 20, 1953 are as follows: The Navajo Tribe, by and through its proper representatives, and the El Paso Natural Gas Company entered into an agreement whereby the Natural Gas Company acquired a certain right-of-way, or rights-of-way over a Navajo Reservation within the State of New Mexico for the purpose of laying a pipe line and the transportation of natural gas across the reservation. It appears that part of the consideration for the granting of this right-of-way was a clause allowing the Navajo Tribe to take five million cubic feet of gas per day from some point on that particular pipe line within their right-of-way and on the reservation.

It is the opinion of this office that Indians operating a gas distribution system wholly on an Indian Reservation regardless of the manner in which they acquire the gas on the reservation are not subject to the laws of the State of New Mexico in relation to regulation as public utilities. It is true that our Public Utility Act does not provide for any exemption of Indians from regulation on Indian Reservations, but by the Constitution of the United States and the Constitution of the State of New Mexico Indian Reservations and Indians are under the exclusive jurisdiction of the Federal Government except in specified cases. It does not appear that there is any specification in this case, which would allow the State of New Mexico to exercise regulatory powers.

{*83} 42 CJS, page 783 states:

"In general a state has no power to interfere by state regulations with Indians who are wards of the federal government and who reside on reservations. In the absence of contravening statutes or treaties, when Indians are off the reservation, they may be subject to, and may claim the benefit of, the laws of the state or territory in which they reside and, where Congress has relinquished its superior power over Indians and their property, such Indians and their property in general are subject to the laws of the state in which the Indians reside. Indians may become entitled to the benefit of, and subject to, the laws of the state or territory in which they reside by virtue of the act of Congress, 25 N.S. C.A. § 349 providing that at the expiration of the trust period and when lands allotted have been conveyed to the allottees by patents in fee, each and every allottee

shall have the benefit of and be subject to the laws, both civil and criminal, of the State or territory in which they reside."

Generally 27 Am. Jur. at 572 states:

"The jurisdiction of the Federal Government over Indian Tribes and over the members of such tribes while they are on Indian Reservations is exclusive. Consequently, such Indians, while they are on their reservations, cannot be controlled or governed by the laws of the state within which the reservations are located."

In the landmark case of Trujillo vs. Prince, 42 N.M., 337, the court pointed out as follows:

"We think the expression of Congress found in Section 2 of Article 21 of our Constitution being a part of the 'Compact with the United States' which was incorporated in compliance with the Act of Congress to enable the people of New Mexico to form a constitutional state government is at least implying consent sufficient for the case at bar."

A portion of said section is as follows:

"The people inhabiting this state do agree and declare that they forever disclaim all right and title 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 by the United States, or any prior sovereignty or until the Indian or Indian Tribes shall have been extinguished, the same shall be and remain subject to disposition and under the absolute jurisdiction and control of the Congress of the United States."

Title 25, Section 321, U.S. Code Annotated sets up the procedure for the acquisition of the right-of-way for pipe lines across Indian territory. Your attention is directed to a portion of this law which prescribes as follows:

"* * * and where such lines are not subject to state or territorial taxation the company or owner of the lines shall pay the Secretary of the Interior for the use and benefit of the Indians such annual tax as he may designate not exceeding \$ 5.00 for each 10 miles of lines so constructed and maintained, under such rules and regulations the said Secretary may prescribe, but nothing herein contained {84} shall be construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either state, territorial or a municipal authority."

In summation it is therefore the opinion of this office that Indians acquiring gas resources from sources wholly upon Indian Reservations within the State of New Mexico are not public utilities subject to regulation by the Public Service Commission of New Mexico.

We trust that this answers your inquiry.

By: William J. Torrington

Assist. Attorney General