

## Opinion No. 60-243

December 30, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. W. D. Badgett, Director New Mexico Liquefied Petroleum Gas Commission P.  
O. Box 1357 Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

Does this commission have jurisdiction and authority to enforce the New Mexico Liquefied Petroleum Gas Act and its regulations on lands allotted for the use of Indians?

If it does have jurisdiction, should complaints for violations be filed with justices of the peace, state district courts, or federal court?

#### CONCLUSION

See Analysis.

### OPINION

#### {\*669} ANALYSIS

Reference is made to your letter of December 15, 1960, re: jurisdiction over land allotted for the use of Navajo Indians.

Under title 25 U.S. Code § 331, 336, 348 the United States Government may transfer to Indians, by patent, land. The legal title may be retained until the federal government sees fit to transfer it to the Indian recipient. Until title is transferred the government of the United States is legal owner of the land, subject to equitable title being vested in the particular Indian who has an interest in the lands allotted.

Consequently it will be necessary, in each instance, for you to determine whether legal title has been transferred from the federal government to the Indian who is beneficiary of the trust. If so, you may act through the State District Attorney in State District Court.

Under the decision of the Supreme Court of New Mexico in the case of **State v. Begay** 63 N.M. 407, 320 P. 2d 1017, the state has no jurisdiction over violations of its laws committed on the Navajo reservation. Presumably the same rule applies to Navajo allotments where title has not passed from the Federal Government to the individual Indian (18 USC § 1151). However, 18, USC § 13 (see also 18 USC § 1152) makes such offenses prosecutable by the United States. In such instances, therefore, violations

should be reported to the United States Attorney in Albuquerque, who may, in his discretion, file charges in the name of the United States of America. The commission can do nothing other than to so report them.

By: Mark C. Reno

Assistant Attorney General