

Opinion No. 64-151

December 17, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. Ray Bell, Chief Forester, Santa Fe, New Mexico

QUESTION

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Section 62-1-13, N.M.S.A., 1953 Compilation (P.S.) provides for the tagging of Christmas trees being transported or offered for sale in this state. Does the fact that such trees were permissively cut on an Indian reservation and are being transported or sold by an Indian or a purchaser from the Indian council exempt such Indian or other person from the necessity of complying with this statute?

CONCLUSION

No.

OPINION

ANALYSIS

It is declared to be a misdemeanor for any person to transport or offer for sale any coniferous or evergreen tree for the purpose of Christmas decoration without first purchasing from the State Forester and affixing to such tree a tag. Section 62-1-13, N.M.S.A., 1953 Compilation (P.S.).

Section 41-21-5 reads as follows:

If any Indian or Indians belonging to any tribe whatever, shall commit any kind of a crime, offense or misdemeanor against the laws of this state, he or they shall come within and be liable under the criminal and civil law of this state: Provided, the said Indian or Indians commit the said crime, offense or misdemeanor beyond the limits of a reservation."

Section 41-21-6, N.M.S.A., 1953 Compilation makes it the duty of any court or competent authority upon imposing punishment upon an Indian pursuant to the provisions of Section 41-21-5, supra, to notify the agent of such Indian's tribe as soon as practicable.

Under the assumed facts, the transporting or sale at retail of such Christmas trees is taking place off the reservation. The seller has a bill of sale from the governing body of the Indian tribe or is a member of the tribe with authority to cut the tree and remove it from the reservation. The tree has been completely severed and removed from the reservation and is being sold off of the reservation.

As a general rule the state courts are without jurisdiction as to civil matters affecting the restricted property of Indians or their tribal relations. **Federal Indian Law, United States Department of the Interior**, p. 363.

Our courts have passed on the question of jurisdiction over Indians in several instances. **Trujillo v. Prince**, 42 N.M. 83, 157 P2d 145; **Martinez v. Martinez**, 49 N.M. 83, 157 P2d 484 held that our courts are open to Indians and that they could enforce property and personal rights in them. There is no jurisdiction vested in our courts involving Indian lands or crimes committed by Indians on the reservation. **State v. Begay**, 63 N.M. 409, 320 P2d 1017; **Your Food Stores, Inc. v. Espanola**, 68 N.M. 327, 361 P2d 950. This is not the situation here presented.

Since the regulation of the sale of Christmas trees is to be applied to transactions off of the reservation and does not affect tribal relations the act may be enforced as to Indians or purchasers from them who are off of the reservation.