

Opinion No. 34-779

June 20, 1934

BY: QUINCY D. ADAMS, Asst. Attorney General

TO: Mr. Alfredo Benavidez, Justice of the Peace, Pct. 21, Rio Arriba Co., Lumberton, New Mexico.

{*139} This is in reply to your letter of June 13, 1934. For the purpose of this opinion I will restate the questions asked by you as I understand them:

1. May an officer of this state without the permission of the Indian Agent go upon the Jicarilla Apache Indian Reservation and serve a subpoena upon an Indian for the purpose of securing his presence as a witness in a state court?
2. May an officer of this state without permission of the Indian Agent go upon an Indian reservation for the purpose of arresting a white person accused of violating the criminal laws of this state, the crime having been committed against another white person without the boundaries of an Indian reservation?
3. Do the courts of this state have jurisdiction over crimes committed by a white person against another white person upon an Indian reservation in this state?

As to the first question, in my opinion, it should be answered in the negative. Under the provisions of Section 2, Article XXI of the Constitution of New Mexico all lands within this state "owned or held by any Indian or Indian tribe, the right or title to which shall have been acquired through the United States or any prior sovereignty; * * * until the title of such Indian or Indian tribes shall have been extinguished * * * shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." While there have been many decisions and conflicting opinions upon questions involving the jurisdiction of state courts over Indians upon Indian reservations I have not been able to find any decision upon the exact question here involved. However in view of the authorities hereinafter referred to and the principles stated in previous opinions of this office (See Op. Atty. Gen. No. 18, 1931) I do not believe that an officer of this state or of its courts has the right without permission of the Indian Agent to go upon the Jicarilla Apache Indian Reservation for the purpose of subpoenaing an Indian to testify in a state court.

I also believe the second question should be answered in the negative. Under an opinion of the Attorney General of the United States (15 Op. Atty. Gen. 601) a military officer cannot go upon an Indian Reservation for the purpose of arresting a fugitive from justice accused of violating the laws of the State of Texas. In such cases the Indian Agent should be notified and it is his duty to deliver such person to the proper state authorities or assist state officers in apprehending them. See Section 225, Title 25, U.S.C.A.

As to the third question, it can only be answered conditionally. The law with respect to such cases is stated in 31 C.J., 539 to be as follows:

"Except where jurisdiction as to crimes committed on a reservation in a state by other than Indians or against Indians is expressly reserved to the United States by treaty or by the act admitting the state into the Union or is subsequently provided for by act of congress, assented to by an act of the legislature, the state courts are vested with exclusive jurisdiction to try and punish such crimes. If the jurisdiction of the United States is so reserved by treaty or enabling act, the United States courts have exclusive {**140*} jurisdiction."

I do not find anything in the Enabling Act or in the constitution of this state which would deprive the state courts of jurisdiction in such cases. Section 2 of Article XXI of the constitution (heretofore referred to) and Section 2 of the Enabling Act to the effect that Indian lands within the state "shall be and remain subject to the disposition and under the absolute control of the congress of the United States" do not, in my opinion, amount to a reservation by the United States of jurisdiction over crimes committed on such lands by one white person against another. See *Draper vs. U. S.* (Mont. 1896) 17 S. ct. 107, 109, 164 U.S. 240, 41 L. Ed. 419. It would follow that the only thing which might prevent the exercise of jurisdiction by the state courts in such cases would be some treaty with an Indian tribe. I do not know of any treaty with Indian tribes in this state containing such a reservation.

Trusting that the foregoing will be of assistance in determining questions involving Indians that may arise in connection with your duties, I am