



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 21, 1977

ATTORNEY GENERAL OPINION NO. 77- 204

Mr. John L. Weingart
Assistant County Attorney
Brown County Courthouse
Hiawatha, Kansas 66434

Re: Crimes--Indians--Jurisdiction

Synopsis: The State of Kansas lacks jurisdiction to prosecute persons accused of the crimes defined in the Federal Major Crimes Act by or against Indians on Indian reservations, as jurisdiction over these offenses under 18 U.S.C. § 1153 is vested exclusively in the federal courts.

* * *

Dear Mr. Weingart:

You inquire whether the State of Kansas has jurisdiction to try certain crimes committed by or against Indians on Indian reservations in Kansas.

The Federal Major Crimes Act, as amended, 18 U.S.C. § 1153, provides in relevant part:

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

Mr. John L. Weingart
Page Two
June 21, 1977

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."

Shortly after its enactment in 1885, the Federal Major Crimes Act was interpreted as granting the federal courts exclusive jurisdiction over the crimes enumerated therein. United States v. Kagama, 118 U.S. 375, 377-378, 65 S. Ct. 1109, 30 L.Ed.2d 228 (1886). Accord Williams v. Lee, 358 U.S. 217, 220, 79 S. Ct. 269, 3 L.Ed.2d 251 (1958); Keeble v. United States, 412 U.S. 205, 209-210, 93 S. Ct. 1993, 36 L.Ed.2d 844 (1973); City of New Town, North Dakota v. United States, 454 F.2d 121, 123 (8th Cir. 1972).

In 1940, the United States Congress enacted Act of June 8, 1940, ch. 276, 54 Stat. 249, Pub. L. 565 (now codified at 18 U.S.C. § 3243). 18 U.S.C. § 3243 provides:

"Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

"This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations."

Since the enactment of this provision, Kansas courts have exercised jurisdiction over crimes committed on the reservations to the same extent as over crimes committed elsewhere in the state. The statute was generally interpreted as granting the State courts exclusive jurisdiction over crimes not specified in the Federal Major Crimes Act and concurrent jurisdiction with the Federal courts over the crimes enumerated in the Act.

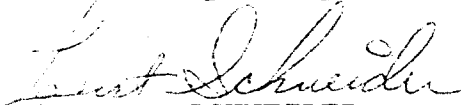
In February of this year, however, the United States Court of Appeals, Eighth Circuit, affirmed a district court decision which held that

Mr. John L. Weingart
Page Three
June 21, 1977

the State of Iowa, under a federal statute whose operative language is identical with that of 18 U.S.C. 3243 except for the designation of the State of Kansas rather than Iowa, lacked jurisdiction over the crimes listed in the Federal Major Crimes Act. Youngbear v. Brewer, 549 F.2d 74 (8th Cir. 1977). The Court concluded that the federal laws applicable to Indian offenses in Iowa should be interpreted as preserving exclusive federal jurisdiction over offenses defined in the Federal Major Crimes Act and as granting the State of Iowa jurisdiction over all other offenses. The decision discussed and compared the statute applying to Kansas and reviewed the legislative history of that statute. It would unnecessarily lengthen this opinion to recite that legislative history and the other bases of the Federal Court's decision. They are attached for your information.

In light of the Youngbear decision, it is my opinion that Kansas courts do not have jurisdiction to prosecute persons accused of committing crimes enumerated in the Federal Major Crimes Act by or against Indians on Indian reservations, as jurisdiction over these offenses, under 18 U.S.C. § 1153, is vested exclusively in the Federal Courts.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:DLW:jj