

Hardin, Status of Town Of. Indian Country, Town of Hardin Not. Reservation, Townsite On. Liquor License, in Town of Hardin. Yellowstone County, Town of Hardin Part Of.

The town of Hardin, being located upon land which has been deeded in fee by the United States Government, is not Indian country within the meaning of the federal statutes prohibiting the sale or introduction of liquor into Indian country, and the jurisdiction of the United States Government over the tract of land upon which said town of Hardin is located has ceased, and the same is now an integral part of Yellowstone county and subject to the laws of the state of Montana with reference to the issuance of liquor licenses therein.

April 28th, 1911.

Honorable Chas. A. Taylor,
County Attorney, Yellowstone County,
Billings, Montana.

Dear Sir:

I acknowledge receipt of your communications of March 31st and April 18th, with reference to the town of Hardin located within your county, and in which you state:

"The town of Hardin in this county is located upon land which at one time was a part of Fort Custer Military Reservation which was within the limits of the Crow Indian Reserva-

tion. When the fort was abandoned in 1904 the military reservation was ceded by the government to the Indians and became a part of the Crow Indian Reservation. Later, portions of the old military reservation were allotted to dead Indians and the heirs of the dead Indians have by warranty deeds conveyed a part of the land to the Lincoln Land Company, which platted it and built the town of Hardin. Hardin was incorporated in February of this year. The townsite lies within the boundaries of the reservation, that is, it is not located within the strip of land which was ceded several years ago to the government and by the government opened to settlement."

By the provisions of the second sub-division of Ordinance No. 1, bearing on our Federal relations and adopted at the time of the adoption of our constitution, it was undoubtedly the intention of the state and the federal government that lands embraced within the Indian reservation should remain under jurisdiction of the United States so long as such lands remained Indian lands and until the title thereto shall have been extinguished by the United States. This provision has been judicially interpreted and determined in the case below cited, which case involved the Crow Reservation upon which the town of Hardin is now located.

U. S. vs. Partello, 48 Fed. 670.

From an examination of the official maps and plats and from the statement of facts contained in your letter it appears that the town of Hardin is located on the outer edge of the present Crow Indian Reservation as reduced by the treaty of 1904; that the tract immediately surrounding and upon which the town is located was formerly the Fort Custer Military Reservation. Prior to the formation and incorporation of the town of Hardin the title to the lands upon which it is located had passed from the United States by patent to the heirs of said allottees, which transfer was presumably made under the act of 1906, which provided in substance for the allotment of lands to the heirs of deceased Indians in fee, provided further that the secretary of the interior might dispose of the lands in fee and pay the proceeds to such heirs. The transfer of the tract in question having been made in fee and there being no trust arrangement or restriction as to alienation, the grantees (allottees) of the government transferred their interest to the present owners of the townsite of Hardin or their predecessors in interest. The title of the United States had been extinguished and the government by its act recognized the right of alienation and when alienated this tract ceased to be "Indian country."

Bates vs. Clark, 95 U. S. 204.

In the case of United States vs. Four Bottles Sour Mash Whiskey, reported in 90 Federal Reporter page 720, which case involved the right to sell liquor upon a mining claim within the interior of an Indian reservation, the court said:

"A valid location of a mining claim has the effect to segregate such claim from the reservation and extinguish the Indian title thereto, so that the land embraced in such mineral location ceases to be Indian country."

In the above case the claimant to the goods confiscated had filed upon a mining claim within the interior of the Colville reservation in the state of Washington, and had erected a house upon said mining claim and after obtaining a retail liquor dealer's license from the county commissioners of the county wherein said reservation was situated, and also from the collector of internal revenue of the United States, he placed in said house a stock of liquors and other merchandise and upon those facts the court decided as above quoted.

The supreme court of the United States in the case of *Bates vs. Clark*, 95 U. S. page 204, in defining Indian country states as follows:

"The simple criterion is that as all the lands described (in the act of 1834) it was Indian country whenever the Indian title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no longer. As soon as they parted with the title, it ceased to be Indian country without any further act of congress, unless by a treaty by which the Indians parted with their title or by some act of congress, this rule was made applicable to the case."

I have carefully examined the federal statutes with reference to the tract of land, and I find no treaty provisions with the Crow tribe continuing in effect the federal statutes relative to the introduction of liquor into the Indian country to be applied to the land ceded or thus disposed of by said Indians.

The case of *Ex parte Dick*, 141 Fed. page 5, was a case involving the right to sell liquor in the village Cul de Sac located in the county of Nez Perce, state of Idaho, which under the facts, was more nearly within the Indian country than the town of Hardin by reason of a provision in the treaty disposing of the lands which provided:

"That for a period of 25 years all the laws of the United States prohibiting the introduction of intoxicating liquors into an Indian country shall be applicable to such lands."

The court in that case used this language:

"The question is whether congress can break up tribal relations of these Indians, allot lands to the individual Indians in severalty, * * * * provide for the conveyance of such lands to individuals and municipal corporations, and still retain over such lands the police power prescribed in Article IX, of the Agreement of May 1, 1893 (This agreement is as above quoted with reference to the prohibition as to the introduction of liquors). We do not think that congress can reserve or exercise such police power within the territorial limits of a state. The police power of the United States can only be exercised where the legislative authority of congress excludes all state legislation."

U. S. v. DeWitt, 9 Wall 41.

Slaughter House Case, 16 Wall 36.

In the case entitled *matter of Heff*, 197 U. S. 505, the court said:

"It will not be doubted that an act of congress attempting as a police regulation to punish the sale of liquor by some

citizen of the state to another within the territorial limits of that state would be an invasion of the state's jurisdiction and could not be sustained, and it would be immaterial what the antecedent status of either buyer or seller was. There is in these police matters no such thing as a divided sovereignty. Jurisdiction is vested entirely in either the state or the nation, and not divided between the two."

From an examination of the authorities above cited and the cases referred to in the opinions of the courts above cited, it is my opinion that the tract of land upon which the town of Hardin is located ceased to be Indian country and was segregated from the Crow Indian reservation at the time of the transfer of said lands from the United States Government in fee, and that said tract properly became a portion of Yellowstone county and the state of Montana, and especially so in view of the provisions of Section 2808, Revised Codes, providing that, that portion of the reservation upon which the town of Hardin is now located was thereby made a part of Yellowstone county. In view of the above it is my opinion that although the town of Hardin is located within the exterior boundaries of the present Crow Indian Reservation still it is not a portion or part of such reservation, and is subject to the laws of the state, and that it not being a part of said reservation and being an integral part of Yellowstone county, Montana, that liquor licenses may be issued to residents of said town in accordance with existing state laws and that the town was properly incorporated and was rightly created a voting precinct by the county commissioners of your county.

Yours very truly,

ALBERT J. GALEN,
Attorney General