No. 223

INSURANCE — NON-LICENSED AGENTS — SALES ON INDIAN RESERVATIONS—AGENCY—INDIANS

Held: **A non-licensed insurance carrier—operating through non-licensed agents—may not sell insurance contracts upon Indian reservations lying within the boundaries of the State of Montana, nor can such organization and its representatives sell insurance on land held in fee simple, though the land does lie within the general boundaries of an Indian reservation.**

August 26, 1941.

Honorable John J. Holmes
State Auditor and Ex Officio
Commissioner of Insurance
Capitol Building
Helena, Montana

Dear Mr. Holmes:

You have asked this office:

> Whether a non-licensed insurance carrier operating through non-licensed agents may sell insurance contracts, first, upon Indian reservations lying within the boundaries of the State of Montana; and, secondly, whether the same organization and its representatives may sell insurance on land held in fee simple, though the land does lie within the general boundaries of an Indian reservation.

In the case of Draper v. United States, 164 U. S. 240, 41 L. Ed. 419, the United States Supreme Court held the Enabling Act of Montana and all subsequent acts passed by the legislature of the State of Montana and the Congress of the United States—providing that all lands lying within the boundaries of Indian reservations shall be under the exclusive jurisdiction of the United States—do not amount to a reservation by the United States of jurisdiction over crimes committed on such lands by or against persons not Indians.

In Stiff v. McLaughlin, 19 Mont. 300, 48 Pac. 232, the Supreme Court of the State of Montana held a county sheriff could enter upon Indian lands to levy an execution issued by a state court on property of one not an Indian but residing on the Indian land.

In the cases of Forbes v. Gracey, 94 U. S. 762, 24 L. Ed. 313, and Cosier v. McMillan, 22 Mont. 484, 56 Pac. 965, the rule was laid down that, unless an Indian reservation has been expressly excluded from a state, personal property in private ownership therein is taxable.

In the case of State v. Big Sheep, 75 Mont. 219, 230, 243 Pac. 1067, the Supreme Court said:

> "On the other hand it is clear that an Indian who has obtained patent in fee to his allotment not only is a citizen of the United States, but has all the rights, privileges and immuniteis of citizens of the United Statees, and is subject to the civil and criminal laws of the State of Montana. He is no longer a ward of the government. His allotment is free from governmental restraint and control."

All of the cases adopt the theory the privilege of being under the exclusive jurisdiction of the United States is a privilege granted to the Indians themselves, because they are wards of the government, but it is not a privilege which is granted to others than Indians.

It is therefore my opinion a non-licensed insurance carrier—operating through non-licensed agents—may not sell insurance contracts upon Indian reservations lying within the boundaries of the State of Montana,

nor can such organization and its representatives sell insurance on land held in fee simple, though the land does lie within the general boundaries of an Indian reservation.

Sincerely yours,

JOHN W. BONNER
Attorney General