

Indians.—Hunter's License.—Firearms.

Chapter 84, laws of 1903, prohibiting Indians from carrying firearms off their reservation, is in operative as to tribal Indians

who have entered into treaties with the United States, in which the right to hunt off the reservation is reserved by them. Indians residing upon reservations within this state are residents of the state; and they can hunt off their reservation during the open season by procuring a hunter's license the same as other residents of the state. They are subject to the same punishment as other residents of the state for violation of the game law or license law when off their reservation.

Helena, Mont., Dec. 28th, 1905.

John C. Lyndes, Esq., County Attorney, Forsyth, Mont.

Dear Sir:—Your letter of the 18th inst. received, in which you request an opinion of this office upon the following question:

“May Indians legally hunt off of their reservation by having a license issued to them?”

On April 21, 1905, this office gave an opinion to John J. Kerr, County Attorney of Valley County, in which it was held that tribal Indians were not required to procure a license to hunt on their reservation, but that they would be required to procure a license to hunt off of their reservation if they had any right at all to hunt off of their reservation. Indians residing upon a reservation situated within the limits of the state are residents of Montana, and it would appear that under Sections 4 and 7 of Chapter 57 of the laws of 1905, they would be entitled to hunt in the State of Montana upon procuring the license as required of other residents of the state.

However, by Chapter 84, laws of 1903, we find that “Any Indian who while off of, or away from, any Indian reservation, carries or bears, or causes to be carried or borne by any member of any party with which he may travel or stop, any pistol, revolver, rifle or other firearm, or any ammunition for any firearm, shall be guilty of a misdemeanor,” etc.

From this law of 1903 it is clear that the legislature intended to prohibit Indians from hunting off of their reservations as there is nothing in the law of 1905 which refers to said Chapter 84 of the laws of 1903, or to Indians in general, therefore, we cannot construe the law of 1905 as a repeal or amendment to said Chapter 84.

It is very plain that both of these laws cannot stand, for an Indian could not be legally licensed to do a thing which, by reason of another law, it would be impossible for him to do lawfully.

The question then arises as to which of these laws the State should rely upon in prosecuting Indians who have been hunting off their reservation.

Your letter does not state the tribe to which the Indians complained of belong, but from the place where the game was killed we assume that they were Northern Cheyenne Indians. However, as all treaties entered into between the United States and Indian tribes in this State are practically the same upon the question of hunting it makes but little difference to what tribe they belong.

Article II of the treaty of 1868 (Indian Affairs, Vol. 2, page 779) made

by the United States with the Northern Cheyenne and Arapahoe Indians, reads in part as follows:

“And the Northern Cheyenne and Arapahoe Indians do hereby relinquish, release, and surrender to the United States, all right, claim, and interest in and to all territory outside the two reservations above mentioned, except the right to roam and hunt while game shall be found in sufficient quantities to justify the chase.”

This treaty clearly shows that the law which attempts to prohibit Indians, who are members of a tribe with which the United States has entered into treaty relation, from carrying firearms when off their reservation is in violation of such treaty and could not be enforced should its validity be assailed in the courts. We are, therefore, of opinion that Chapter 84, laws of 1903, should not be considered in determining the manner of prosecuting Indians, from any of such tribes, when found hunting off their reservation without a license.

In fact, under the above treaty there is a serious question as to the State's right to establish a closed season for hunting so as to prohibit tribal Indians from hunting during such period, and also of the State's right to require them to pay the license for hunting during the open season required of other residents of the State.

However, by Chapter 57, laws of 1905, our legislature has enacted such a law, and we must if possible uphold and enforce it.

After careful thought and consideration, we are of opinion that this latter law, intended as it is, to prevent hunting during certain seasons of the year, and imposing a license upon hunters to raise money for the purpose of affording better protection to the game, should be held not to be an unreasonable restriction upon the treaty rights of tribal Indians, and Indians therefore are subject to its provisions. Accordingly, you are advised that tribal Indians should not be allowed to hunt off the reservation at all during the closed season, and that they should not be permitted to hunt off the reservation during the open season without having first procured a hunters license the same as other residents of the State. Any Indian hunting off the reservation without a license during the open season, or hunting at all when off the reservation during the closed season, is liable to the same punishment as white residents of the State would be under the same circumstances.

If such Indians do not belong to any tribe with which the United States had entered into treaty relations, similar to the one quoted above, then it is likely that Chapter 84, laws of 1903, prohibiting Indians from carrying firearms when off the reservation, would apply, and in such event they would not be entitled to a hunter's license at all, and, if found hunting with firearms off the reservation, would be subject to punishment under said Chapter 84. However, as we understand it, that question could not be raised in the case now under consideration.

Very truly yours,

ALBERT J. GALEN,
Attorney General.