

Licenses, for Hunting and Fishing—Indians—Indian Reservations.

Tribal Indians are not required to procure a License to hunt on their reservation. They would be required to procure a license to hunt off of their reservation, if they could hunt at all, under the provisions of Chapter 86, Laws of 1903, prohibiting Indians from carrying fire arms off the reservation,

As to persons other than Indians living upon an Indian Reservation, they would be required to procure a license to hunt thereon, as the laws of the State extend over Indian reservations and to persons thereon, except Indians, and crimes committed by or against an Indian. While it would be necessary for a white person living on the reservation to procure a license to hunt thereon in order to comply with the laws of Montana, it does not follow that the issuance of a license to such person would give him authority to hunt on such reservation; his right to hunt there depending upon the laws of the United States governing the rights of white persons upon a reservation.

April 21, 1905.

Mr. John J. Kerr, County Attorney, Glasgow, Montana.

Dear Sir:—Your letter of the 15th instant, requesting an opinion upon the following questions, to hand.

Is it necessary for the following classes of persons to procure a license to hunt and fish: (1) Tribal Indians on an Indian reservation to hunt on their reservation; (2) Tribal Indians to hunt off the reservation; (3) White persons living on a reservation to hunt on the reservations; (4) Other white persons in the employ of the government on the reservation to hunt on the reservation.

In answer to the first proposition you are advised that Indians are not required to procure a license to hunt on their reservations, as such territory is set aside and reserved especially to them.

As to the second proposition, Section 4 of substitute for House Bill No. 120, Laws 1905, provides that every person who is a *bona fide* resident of the State of Montana must procure a license; therefore, tribal Indians hunting off their reservation would be required to have a resident's license. However, there might arise some conflict between the license law and Chapter 84, Laws of 1903, which prohibits any Indian while off the reservation from carrying any fire arms.

As to the third and fourth propositions, in my opinion, all white

persons living upon, or in the employ of the government upon, a reservation should be required to procure a license before hunting thereon. Our state laws extend to Indian reservations, and all persons thereon excepting Indians.

In the case of *Draper v. U. S.* 164 U. S. 247, the United States supreme court held that by the Enabling Act of Montana "it was not intended to deprive the state of the power to punish for crimes committed on a reservation or Indian lands by other than Indians or against Indians." (See also *U. S. v. McBratney*, 104 U. S. 624.)

From these authorities it is clear that any white person hunting upon a reservation without a license would be violating the state game laws and subject to punishment. However, while it would be necessary for such persons to procure a license in order to hunt upon an Indian reservation, it does not by any means follow that the issuance of such persons of a license to hunt gives them the right to hunt upon Indian reservations, as that right is to be determined by United States laws and treaties with the Indians. It is not our duty, however, to determine that question.

Yours very truly,

ALBERT J. GALEN,
Attorney General.