

Indians, Who Are. Liquor, Certain Persons May Not Be furnished.

The law of Montana prohibiting the sale of liquor to Indians does not define the term "Indian." and no rule can be laid down.

Sept. 4th, 1915.

Hon. George W. Ruffcorn,
County Attorney,
Glasgow, Mont.

Dear Sir:

Some weeks ago you propounded an inquiry to this office asking for a definition of the word "Indian" as used in Sec. 8338 of the Revised Codes of Montana of 1907, as amended by the Laws of 1909, p. 60. You also inquire as to whether the Federal Courts might prosecute violations of this statute in the Federal Courts.

Sec. 8380 of the Revised Codes of 1907 prohibits the sale or giving of intoxicating liquors to an Indian. The section was originally enacted February 16, 1905 and is found in the Ninth Session Laws, p. 17. Sec. 541, Penal Code of 1895 was substantially similar in terms to

the one under consideration. Sec. 160 of the Fourth Division of the Compiled Statutes of 1887, which the foregoing enactment supercedes, prohibits any person from selling or bartering or giving intoxicating liquors to an Indian or Half-Breed Indian. The term "Half-Breed Indian," it will be observed, is omitted from the statute now in force.

Many states have laws prohibiting the giving away, disposing, exchanging or bartering of intoxicating liquors to Indians. In all of them, however, there appears to be some language either directly defining the term "Indian," or indicating who are included within the Act. These various laws have been construed in the following cases:

State v. Nicholls, 112 Pac. 269.

People v. Gebhard, 151 Mich. 192.

People v. Munroe, 70 Pac. 1072.

People v. Bray, 38 Pac. 731.

LaFontaine v. Abalene, 8 Ind. 6.

They are not, however, of much value in construing our own statute in as much as they specifically defined the word "Indian." Our own court has never passed upon the question. It is impossible therefore, to lay down any rule by which persons engaged in the liquor business may be guided. Until the term as used by our legislature is judicially construed the safest rule would be to refuse the sale of liquor to any person having Indian blood in his veins.

In regard to the second question, you are advised that the statute in question is a police regulation, under which the state courts have jurisdiction to punish violations of the Act; at the same time the Federal Courts have jurisdiction under the federal statutes upon the question to also punish persons for furnishing liquor to Indians.

Territory of Montana v. Guyott, 9 Mont. 46.

State v. Wise, 70 Minn. 99.

State v. Campbell, 21 L. R. A. (Minn.), 169,

the result being that there may be double punishment for the same offense.

Black on Intoxicating Liquors, Sec. 427.

Yours very truly,

J. B. POINDEXTER,

Attorney General.