

**Herd Districts—Indian Lands—Allotment—Indian Reservation.**

Petition for the creation of a herd district may not include Indian lands, the title to which has not been extinguished in the United States.

Arlie M. Foor, Esq.,  
County Attorney,  
Wolf Point, Montana.

September 13, 1929.

My dear Mr. Foor:

You have requested my opinion upon the question of whether in a petition for the creation of a herd district lands may be included which consist of Indian allotments and restricted Indian lands in the Fort Peck reservation.

The herd district law provides, among other things, that after the district is created horses, mules, cattle, sheep and goats are prohibited from running at large within the boundaries of said district and that any of said animals so running at large may be impounded and the owner be required to pay damages and costs sustained by reason of said animals running at large, for which damages and costs the person impounding them has a lien upon said animals which may be enforced by a sale thereof in case the owner does not pay the said damages and costs.

It is apparent that if a herd district under the state law can be created so as to include Indian lands, the title to which has not been extinguished in the United States, the said herd law will with its restrictions, penalties and burdens become operative upon the said Indian lands and the Indian occupants thereof, and to that extent at least constitute the state law a rule of government over the lands constituting part of the Indian country and the Indians who are wards of the government.

While the state may exercise certain jurisdiction in the Indian country it has been held that it may not do so where such jurisdiction concerns the government and protection of the Indians. (Vol. 8, Opinions

of Attorney General, p. 5). It is well known that the laws of the United States relating to the administration of the Indian affairs have for their purpose the protection of the Indians who are and remain its wards, and there exist certain federal laws which have for their object the fostering of agriculture and the raising of livestock by the Indians on the reservation, and to protect the Indians in the possession of their said livestock, other federal laws govern the disposition thereof and the dealing therewith by Indians and white persons alike. Also certain of the allotment and patent laws contain restrictions which have for their purpose the protection of the Indians in the possession of their lands.

It is apparent that the state may not extend its herd district laws to a field that is exclusively within the jurisdiction of the United States for by so doing the said law with its restrictions and burdens would become a part of the government of the wards of the United States, of their property, and of land, the title to which the United States government, for the protection of the Indian, has withheld from him. The sole right to govern upon this question rests in the United States and laws emanating from another sovereign may not interfere therewith.

I am therefore of the opinion that Indian lands which have not been withdrawn from the Indian country by patents in fee may not be included within a herd district created under the laws of Montana.

Very truly yours,

L. A. FOOT,  
Attorney General.