

Opinion No. 578**Barbers—Police Power—Fort Peck
—Examination of Barbers
—Federal Reserves.**

HELD: The state exercises complete police power over territory within its boundaries except such as are specifically reserved by the Federal Government by the Enabling Act and in Acts of Congress on Federal Reserves.

The Barbers Act is a reasonable exercise of the police power and may be enforced in the ceded territory at Fort Peck.

The Barbers' Board has power to promulgate rules and regulations giving applicants the right to re-examination on payment of an additional \$15.00 fee.

July 21, 1934.

You request our opinion in the following matters: "1. Does or will the new city of Fort Peck and the barbers that will be established there come under our law governing the practice of barbering? 2. If an applicant for examination and registration to practice barbering has failed to make a passing grade three consecutive times and said applicant still wishes to practice barbering or try to secure license, must he then re-apply and pay an additional fee of \$15, or can he no longer practice in the State of Montana or make an attempt to re-apply?"

In regard to question No. 1, the State of Montana, of course, had full and complete jurisdiction over the waters of the Missouri River at the Fort Peck dam site and the adjacent lands, except such jurisdiction as the Federal Government retains over navigable streams for the purpose of regulating trade and commerce. By Chapter 50 of the Acts of the Extraordinary Session of 1933, the State ceded concurrent jurisdiction to the United States over the waters of the river and lands touching thereon in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, saving to the state, however, the right to serve civil and

criminal process within the limits of the grant.

We do not see any essential difference between the relative powers of the State and Federal Government at Ft. Peck in the matters involved in your question, and such powers as the two governments have and exercise in all such matters in other territory, title to which is in the Federal Government. The State exercises complete police power over territory within its boundaries except such as are specifically reserved by the Federal Government by the Enabling Act and in Acts of Congress on Indian lands, Military Reservations, National Parks and similar territory. Any offenses committed against the laws of the State on any such Federal reserve within the limits of the State are punishable under state laws, unless a party to the action be a ward of the Federal Government, or subject to military jurisdiction. If one white man kills another white man on an Indian Reservation, or if a white kills an Indian who is not a ward of the Federal Government, the crime comes under the jurisdiction of the state government.

In *United States v. McBratney*, 104 U. S. 621, it was held that where a state was admitted to the Union and the Enabling Act contained no exclusive jurisdiction as to crimes committed on an Indian Reservation by others than Indians or against Indians that the state had jurisdiction to try and punish such crimes. In *Draper v. United States*, 164 U. S. at page 247, it was held the Enabling Act did not deprive the State of Montana of jurisdiction to try and punish crimes committed on an Indian Reservation where Indian wards were not involved. It is clearly the policy of the Federal Government to leave to the state enforcement, within the boundaries of the state, of all laws coming under the police powers, except in such special matters as those referred to above.

The Barbers Act is in the interest of the public health of the people of this state, and is a reasonable exercise of police power, and we think the enforcement of the Act at Ft. Peck would not in any manner conflict with the jurisdiction of the Federal Government.

In Chapter 50, ceding concurrent jurisdiction to the United States, it is

provided that "jurisdiction shall not vest until the United States * * * notifies the Governor of the State of Montana that they assume police or military jurisdiction over said territory," but this reference to "police" jurisdiction obviously does not apply to the enforcement of the Barber's Act in the ceded territory.

In reply to your question No. 2, Chapter 18, Laws of 1931, amends the Barber's Act (Chapter 127, Laws of 1929) and grants to applicants the right to three examinations for one fee of \$15.00. No provision is made for a re-application and additional examinations after the third failure of an applicant, but the board is authorized to make and promulgate rules and regulations not inconsistent with the Act and we think this grant of power to the Board would authorize the Board to give an applicant further examinations, but if further examinations are given it is clearly the intent that an additional fee of \$15.00 shall be charged.