

Opinion No. 97.

Livestock—Brands—Indians.

Held: Chapter 59, Laws of 1945, amended by Chapter 176, Laws of 1945, covers and requires inspection of cattle belonging to Indians, whether they be deemed wards or not, when such cattle are being moved outside of a reservation, within the State of Montana, and when such movement of cattle does not come within exceptions as specified in Section 1, Chapter 176, Laws of 1945.

November 21, 1945.

Mr. Paul Raftery, Secretary
State Livestock Commission
State Capitol
Helena, Montana

Dear Mr. Raftery:

You have requested an opinion from this office asking if Chapter 59, Laws of 1943, as amended by Chapter 176, Laws of 1945, requires inspection of cattle from Indian reservations within the state of Montana when such cattle are outside of the reservation boundaries.

The question presented does not involve or present the issue of inspection within the boundaries of an Indian reservation. It does, however, raise the question of whether or not cattle belonging to wards of the United States government are subject to state cattle inspection laws when such cattle are being transported from an Indian reservation through a portion of the State of Montana over which the federal government does not maintain exclusive jurisdiction.

In the case of *State v. Big Chief*, 75 Mont. 219, 243 Pac. 1067, the court in determining if the state had jurisdiction to punish for commission of a misdemeanor which the United States had never assumed to embrace within its jurisdiction, stated:

"If defendant is a ward of the government and the act was committed by him upon land to which the United States has relinquished title, the state has jurisdiction and the answer must be in the affirmative."

It was further stated in this case:

"Indians who have obtained their citizenship through being allottees of land, and who have obtained patents in fee, are subject to state civil or criminal laws."

The misdemeanor in question here involving the movement of cattle while inside the boundaries of the state of Montana and outside an Indian reservation is not dependent on the Indian's status as a ward or patentee in fee of his allotment. An Indian, regardless of his status, violating the laws in this respect when outside the reservation is subject to state jurisdiction.

Issued cattle and their increase in the reservation bear the brand of the Indian Department and may not be sold, exchanged or slaughtered except by consent of the agent in charge. The United States government in order to protect such ownership may maintain an action in a federal court in

behalf of an Indian from whom issued cattle have been unlawfully taken.

Opinion No. 357, Volume 19, Report and Official Opinions of the Attorney General, concerns state jurisdiction over acts committed by Indians. It was held in this opinion:

"If an act is committed by an Indian who is a ward of the federal government upon land to which the United States has relinquished title, the state has jurisdiction to punish him for a misdemeanor not embraced within the jurisdiction of the United States."

The court in *Ex Parte Moore*, 28 S. D. 339, 133 N. W. 817, stated:

"Indians although living on a reservation and maintaining tribal relations are amenable to the laws of the state when they are off the reservation."

Again the court in *State v. Youpee*, 103 Mont. 86, 61 Pac. (2d) 832 said:

"Indians though belonging to a tribe which maintains a tribal organization occupying a reservation within a state are amenable to state laws as to criminal offenses against such laws committed by them off the reservation and within the limits of the state, even though the crime is committed against an Indian of the same tribe."

Chapter 59, Laws of 1943, as amended by Chapter 176, Laws of 1945, makes no exception as regards ownership of cattle to be inspected. It is not possible to infer or interpret that cattle belonging to Indians were to be excepted from the provisions of these acts.

It is therefore my opinion that Chapter 59, Laws of 1943, amended by Chapter 176, Laws of 1945, covers and requires inspection of cattle belonging to Indians, whether they be deemed wards or not, when such cattle are being moved outside of a reservation, within the state of Montana, and when such movement of cattle does not come within exceptions as specified in Section 1, Chapter 176, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General