

VOLUME NO. 33

Opinion No. 23

INDIANS - reservations - sale of alcoholic beverages. Sections 4-420 and 4-403, Revised Codes of Montana, 1947.

HELD: An operator of a retail beer and liquor outlet in Indian country in Montana must comply, not only with the federal Indian liquor laws, but also the liquor laws of the state of Montana.

June 29, 1970

Mr. Joseph T. Shea
Administrator
Liquor Control Board
Helena, Montana 59601

Dear Mr. Shea:

You have requested my opinion as to whether the Montana Liquor Control Board has jurisdiction over the operation of a proposed retail beer and liquor outlet by the Chippewa Cree Tribe on the Rocky Boy's Reservation, and, if so, to what extent.

The Indian reservation is located partially in Hill County and partially in Chouteau County, Montana. The proposed site of such retail beer and liquor outlet is to be located in Hill County where you advise no licenses are available under the quota system prescribed by the Montana statutes. It is my understanding that such quota system is based on the latest census figures of the United States government. The census figures for Hill County include the Indians of Rocky Boy's Reservation located in said county, according to Mr. Edgar L. Bryan, Assistant Regional Director, Decennial Census Operations Office, Arcade Building, 1319 Second Avenue, Seattle, Washington.

You advise that the Rocky Boy's Reservation is composed entirely of trust lands. Under such circumstances the sale of alcoholic beverages on the reservation would ordinarily be prohibited by sections 1154, 1156, 313, 3488 and 3618 of Title 18, U.S.C.A., commonly referred to as the federal Indian liquor laws. However, under the provisions of section 1161, Title 18, U.S.C.A., the prohibitions set forth in the above sections shall not apply:

“ . . . within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity **both with the laws of the state in which such act or transaction occurs** and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.” (Emphasis supplied).

The tribe passed ordinance 1-70, authorizing the sale of alcoholic beverages at retail prices on that part of the reservation located in Hill County. The tribe has now requested a liquor license from the Montana Liquor Control Board.

Chapter 4, Title 4, Revised Codes of Montana, 1947, sets forth the laws of Montana concerning the retail sale of alcoholic beverages.

Section 4-420, R.C.M. 1947, prohibits the retail sale of alcoholic beverages without a license issued by the Montana Liquor Control Board. Section 4-403, R.C.M. 1947, sets forth the number of licenses available in each area of the state.

It should also be pointed out the recent case of **State ex rel. Kennerly v. District Court of the Ninth Judicial District of the State of Montana**, No. 11786, decided March 2, 1970, indicates generally that the state of Montana can exercise jurisdiction in certain instances over the affairs of Indians in Indian country in the state of Montana.

In view of the fact that section 1161, Title 18, U.S.C.A., requires conformity with the “. . . laws of the state in which such act or transaction occurs . . .”, it is my conclusion that the Montana Liquor Control Board has jurisdiction over the operation of the proposed retail beer and liquor outlet on the Rocky Boy's Reservation to the extent prescribed in chapter 4, Title 4, R.C.M. 1947.

In order to comply with such liquor laws of Montana, the tribe must first obtain a liquor license from the Montana Liquor Control Board, as required by section 4-420, R.C.M. 1947, and that such license may only be issued for a retail outlet in Hill County if the same is available under the quota system prescribed in section 4-403, R.C.M. 1947.

THEREFORE, IT IS MY OPINION that an operator of a retail beer and liquor outlet in Indian country in Montana must comply, not only with the federal Indian liquor laws but also the liquor laws of the state of Montana, contained in chapter 4, Title 4, R.C.M. 1947, including, but not limited to, obtaining a liquor license from the Montana Liquor Control Board as required by section 4-420, R.C.M. 1947, and complying with the quota system prescribed in section 4-403, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General