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OPINION NO. 92

PRISONS - Western Interstate Corrections Compact, Indian tribes, contracts for custody and care of prisoners;
INDIANS - Western interstate corrections compact, contracts for custody and care of prisoners; REVISED CODES OF MONTANA, 1947 - Sections 95-2308 through 95-2312.

HELD: The Department of Institutions has authority to contract with an Indian tribe which is a member of the Western Interstate Corrections Compact for the custody, care, and maintenance of adult Indian prisoners.

21 November 1977

Lawrence M. Zanto, Director
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion on the following question:

Does the Department of Institutions have authority to contract with an Indian tribe which is a member of the Western Interstate Corrections Compact for the custody, care and maintenance of adult Indian prisoners?

The Cheyenne River Sioux Tribe in South Dakota has developed the Swift Bird Project, an arm of the tribal government, intended to function as a rehabilitation center for adult, male Indians. The object of the project is to contract with state prison authorities to send Indian felons under state sentences to participate in a rehabilitation program administered by Indians according to traditional values.

The tribe proposes to become a party to the Western Interstate Corrections Compact, sections 95-2308 through 95-2312, R.C.M. 1947. The purpose of the Compact is to provide "programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders" through common action of the member states. The Compact allows one state to send prisoners to a facility in another state when desirable in order to provide adequate quarters, care, rehabilitation or treatment. This is accomplished by contract between the sending state and the receiving state.

While the Compact defines "state" as one of the United States, or Guam, it also specifically mandates that it be "liberally construed." Further, section 95-2309 broadly provides:

Any court or state agency having power to commit or transfer an inmate...to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to section 95-2308, subsection 3 of the Western Interstate Corrections Compact.

Section 95-2310 mandates the courts, departments, agencies and officers of this State to enforce the Compact and to do "all things appropriate to the effectuation of its purposes and intent...."

A narrow reading of the Compact would frustrate its purpose of providing individualized treatment of prisoners, and would undermine the important service offered by the Swift Bird Project. The broad remedial purposes of the Compact mandate a broad construction of its provisions. I have previously held that the state may contract with Indian tribes to promote outdoor recreation opportunities (37 OP. ATT'Y GEN. NO. 21), and convict rehabilitation presents an even more compelling case for state-tribal cooperation.

This construction of the Compact is in harmony with the legislative intent evident in Montana's correctional statutes. Section 80-1419 empowers the department to contract with Indian tribes for residential and educational services for Indian children. Section 80-1907 empowers the department to contract with "the federal government, other states, or the commissioners of counties" for the confinement of inmates when state facilities are inadequate. Indian tribal justice systems furlough program, section 95-2217, et seq.

The obvious intent of these statutes and the Compact, construed together, is to empower the department to provide the best treatment, rehabilitation and custody possible for prisoners on an individualized basis. It is clearly recognized that these conditions can oftentimes be met only by sending the inmate to a correctional institution out of state. In many instances Indian prisoners may require specialized treatment which is not available in Montana. We are fortunate to have an innovative project such as Swift Bird with which to cooperate in the rehabilitation of Indian prisoners.

THEREFORE, IT IS MY OPINION:

The Department of Institutions has authority to contract with an Indian tribe which is a member of the Western Interstate Corrections Compact for the custody, care, and maintenance of adult Indian prisoners.

Very truly yours,

MIKE GREELY
Attorney General