

OPINION
64-117

September 17, 1964 (OPINION)

Mr. John B. Hart

State's Attorney

Rolette County

RE: Indians - Authority on Reservation - Deputies

Reference is made to your letter addressed to this office under date of August 13, 1964, in which you refer to a paragraph in our Opinion issued to Colonel Ralph M. Wood, Superintendent of the North Dakota Highway Patrol, dated July 10, 1964, said paragraph reading as follows:

It is our opinion that the only circumstances under which your officers would be authorized to act on an Indian Reservation would be when they are deputized by the proper officer who has the legal sanction to deputize others, as for example an officer of the Bureau of Indian Affairs Police."

In your letter of August 13, 1964, you say: "This office is concerned as the same legal principles applying to the State Highway Patrol undoubtedly apply to the County Sheriff, his deputies, etc. For this reason, we would appreciate any information you could give us as to specifically what officers of the Bureau of Indian Affairs have authority to deputize a County Sheriff and Deputy Sheriffs so such officers are protected when on the Indian Reservation."

Recently we addressed a letter to the Bureau of Indian Affairs, Aberdeen, South Dakota, with reference to deputizing non-federal officers, and herewith attached is a copy of the reply from said Bureau, dated September 11, 1964.

Based upon the information afforded in this letter, we conclude that the Superintendent of the Turtle Mountain Agency has authority to deputize a County Sheriff or a Deputy County Sheriff to act as a peace officer on the Turtle Mountain Reservation.

You further state in your letter of August 13, 1964 that your primary concern is that, should the Sheriff or his Deputies who have this deputy special officers' commission be injured, that they and the members of their families would be protected by the Workmen's Compensation under state law.

Cooperation and mutual assistance between governmental bodies and agencies in achieving a common goal such as preserving the peace is expected and desired, if not a duty. A sheriff or deputy sheriff is an employee of the county as defined in Section 65-01-02 of the North Dakota Century Code. When he performs services as a peace officer for another governmental body or agency on a deputized status, he is

still performing his basic duty. In any event, he would have the status of a loaned employee and as such, he would be an employee as contemplated by such term under Section 65-01-02.

It is the opinion of this office that if the County Sheriff of Rolette County or his Deputies were deputized by the Superintendent of the Turtle Mountain Agency to serve as peace officers on the said Reservation, they would be covered by Workmen's Compensation if injured in the performance of duty on the Reservation. The Sheriff is a constitutional officer and his powers and duties are spelled out by statute. The very character of his office is such that he is not dependent upon a superior officer, but upon the legislature and the electorate. We do not believe that his coverage by the Compensation Bureau would be jeopardized by his performance of preserving the peace on the Turtle Mountain Reservation. The same reasoning would apply to a Deputy Sheriff who, by virtue of being a duly appointed, qualified and acting Deputy, is clothed with the same powers.

HELGI JOHANNESON

Attorney General