

OPINION
69-95

December 16, 1969(OPINION)

Mr. John B. Hart
State's Attorney
Rolette County

RE: Counties - County Coroner - Authority on Reservations

This is in response to your letter in which you make reference to an opinion addressed to you dated October 18, 1965, pertaining to the authority of the Rolette County Mental Health Board in regard to Indians living in and on the reservation. You then ask for an opinion whether or not the Rolette County Medical Coroner has any authority or responsibility on deaths occurring in Indian country, (Turtle Mountain Indian Reservation). You also state that if it is the opinion of this office that the Rolette County Medical Coroner must provide services in Indian country, you further request an opinion as to the financial responsibility of Rolette County in paying for (1) the services of such coroner, (2) transportation of such bodies to pathologists for such autopsy, and (3) payment of pathologists for such autopsy.

It should be noted that the opinion dated October 18, 1965, concluded that the Rolette County Mental Health Board had jurisdiction over the "reservation Indians" only if jurisdiction was accepted by the Indian or by his legal guardian under the provisions of Chapter 27-19 of the North Dakota Century Code. This opinion was, to a great degree, predicated on the case *In re Whiteshield*, 125 N.W.2d. 694, which amongst other things said that the State has completely disclaimed State jurisdiction over civil causes of actions arising on an Indian reservation, unless the Indians have acted to accept jurisdiction in the manner provided by statute, (Chapter 27-19 of the North Dakota Century Code). Since then, the North Dakota Supreme Court in *Fournier v. Roed*, 161 N.W.2d. 458, in substance, said that an Indian reservation does not constitute a sanctuary of a person who has committed a crime off the reservation but enters the reservation thereafter. In the *Fournier* case it involved an Indian.

The memorandum decision by Judge Douglas B. Heen of the District Court is well written and is on sound legal principles, but it does not dispose of the matter at hand. However, the matter at hand is not quite as simple and does not come within any of the foregoing decisions. It is a well-settled and recognized principle of law that the United States Government has jurisdiction on crimes committed on the reservation.

Being one of the more knowledgeable persons on the complex jurisdictional problem between Federal and State law on Indian reservations, you will recognize that it is difficult to delineate or categorize with any reasonable certainty which jurisdiction prevails. Court decisions are not necessarily controlling or reliable because of the legislative changes in both Federal and State laws pertaining to the subject matter. Fortunately or unfortunately,

depending on the viewpoint, this office is not in a position to make a determination on the basis of what will be more beneficial to the parties concerned but is limited to the construction of the existing laws.

The functions and duties of a coroner as set forth in Chapter 11-19 and Chapter 11-19A of the North Dakota Century Code are investigatory in nature and can be identified with criminal proceedings. The coroner's jurisdiction is, in this respect, similar to any other law enforcement officer. Basically, suspicion that death was incurred or is the result of unlawful means generally gives rise to the coroner's inquest proceedings.

Basically, criminal jurisdiction on Indian reservations is within the jurisdiction of the United States Government, unless it involves a crime by a non-Indian against a non-Indian on a reservation. (See Section 203 of the North Dakota Constitution and *State v. Lohnes*, 69 N.W.2d. 508.)

It is, therefore, our opinion that the county coroner is not required to perform any services in or on the Indian reservation, unless a death of a non-Indian appears to be caused by a non-Indian. Under such circumstances the county coroner may act, or is under obligation to perform the required duties and functions. In such instances where the services of the coroner are permitted or required, the costs for the services, transportation of the body to a pathologist for an autopsy, and the payment to the pathologist for an autopsy and report would be borne by the county. It further follows that if the death is that of an Indian which occurred on the reservation, the coroner does not have jurisdiction and consequently would not be required to perform any services. However, it has been a governmental policy to cooperate wherever it is legally possible. If the Federal Government or the Tribal Government were to ask the coroner to perform a service or function at their request, with the understanding that they would pay for such services, it would be expected that the county coroner honor such request whenever possible.

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Attorney General