

LETTER OPINION
71-181

January 13, 1971 (OPINION)

Mr. Leslie O. Ovre
Executive Director
Public Welfare Board

RE: Indians - Jurisdiction - Licensing of Foster Homes

This is in reply to your letter of 21 December 1970 requesting clarification of the power and authority of the State of North Dakota on Indian reservations in term of protective services and licensing of foster homes.

You inform us that the State of North Dakota provides protective services for abused and neglected children under chapter 50-25 of the North Dakota Century Code and further corrective measures under the authority of the Juvenile Court Act under chapter 27-20. Your letter indicates that the licensing and supervision of foster homes is discharged under chapter 50-11. You state that it is recognized that there may be other statutes, interpretations and decisions which may also have a bearing on this question.

Your first question is stated as:

Does the authority of the State of North Dakota as defined in terms of protective services and enforcement of licensing functions apply to situations involving Indian children who live on Indian reservations within the state?"

Your letter further indicates that licensing of foster homes includes inspection of the home, evaluating the home in terms of established standards, and participating in enforcement of compliance with standards. Your second question is stated as:

Specifically, can the Public Welfare Board legally enforce this licensing function on the Indian Reservation?"

We are enclosing herewith Xerox copy of letter of this office of date January 16, 1967, to the State Plumbing Inspector, with regard to State Plumbing Board activities on Indian Reservations, Xerox copy of letter of this office of date November 27, 1968, to the special assistant attorney general for the State Electrical Board, with regard to State Electrical Board activities on Indian Reservations and Xerox copy of letter of this office of date February 5, 1969, to the assistant attorney general for the State Electrical Board, with regard to State Electrical Board activities on Indian Reservations.

While, we do, of course, recognize many distinctions between the activities of your department in supervision of foster homes, and the functions of the state electrical and plumbing boards, we should mention that the basic authority relied upon, in regard to electrical and plumbing board functions, was In Re Whiteshield 124 N.W.2d. 694, (1963) in which the supreme court of this State determined that the juvenile division of the State district court did not have

jurisdiction to terminate parental rights of an Indian family on the Indian reservation.

It would thus be our opinion that your department does not have authority to enforce licensing functions with regard to foster homes caring for Indian children who live on Indian reservations within the State. We would thus further assume that the offense defined in section 50-11-10 of the 1969 Supplement to the North Dakota Century Code, would in effect, in regard to these situations, be an offense by a nonIndian, or Indian, involving other Indians; i.e., the children cared for by these foster homes; and thus the State courts would not have jurisdiction of such offenses. As stated by our supreme court in *In Re Whiteshield* 124 N.W.2d. 694 at page 695 of the N.W.2d. reporter:

In recent cases decided prior to the 1958 amendment of Section 203 of the North Dakota Constitution, Chapter 430 of the Session Laws of 1959, and the effective date of Chapter 242 of the Session Laws of 1963, dealing with jurisdiction over civil causes arising on Indian country, it was held that North Dakota courts had no jurisdiction over a person alleged to have committed a crime under the State's laws against one who is an Indian allegedly committed on an Indian reservation. *State v. Kuntz* (N.D. 1954), 66 N.W.2d. 531, and *State v. Lohnes* (N.D. 1955), 69 N.W.2d. 508. * * * "

We are familiar with the Federal law embodied in 25 USCA 231, which provides:

ENFORCEMENT OF STATE LAWS AFFECTING HEALTH AND EDUCATION: ENTRY OF STATE EMPLOYEES ON INDIAN LANDS. The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application."

While this statutory provision may well embody a Federal consent to the State's accepting jurisdiction, for these purposes on Indian reservations the State of North Dakota has not consented to acceptance of such jurisdiction except in accordance with the terms of chapter 27-19 of the 1969 Supplement to the North Dakota Century Code; and, of course, this Federal statute does not constitute compliance with the terms of this State statute.

We are also familiar with the Federal law embodied in 25 USCA 452 which provides:

CONTRACTS FOR EDUCATION, MEDICAL ATTENTION, RELIEF AND SOCIAL WELFARE OF INDIANS. The Secretary of the Interior is authorized, in his discretion, to enter a contract or contracts

with any State or Territory, or political subdivision thereof, or with any State university, college or school, or with an appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory."

While such statutory provisions could possibly be of assistance to State agencies wishing to participate in Federal functions in these fields on Indian reservations, it seems doubtful that it could be extended to the point of allowing actual enforcement of the State Foster home licensing statutes, in the usual sense, where the State has not acquired full jurisdiction in the area involved.

It is thus our opinion that the Public Welfare Board cannot legally enforce the licensing function prescribed in chapter 50-11 of the North Dakota Century Code, as amended to date, insofar as it concerns foster care homes either operated by Indians or caring for Indians on the Indian Reservations.

HELGI JOHANNESON

Attorney General