

**OPINION
71-187**

December 16, 1971 (OPINION)

Mr. Leslie O. Ovre

Executive Director

Department of Social Services

RE: Indians - Jurisdiction - State Youth Authority

This is in response to your letter of December 2, 1971, with regard to Indian jurisdiction matters.

You call to our attention the provisions of Chapter 27-21 of the 1971 Supplement to the North Dakota Century Code with regard to creation of the State Youth Authority within the Public Welfare Board (now Social Services Board), and such State Youth Authority's powers and duties.

You mention that under the provisions of Section 27-21-02 the juvenile court may commit a child to the custody of the State Youth Authority, and that pursuant to this same section in the State Youth Authority then may place the child in custody of one of several persons or institutions provided therein.

You also call our specific attention to the last paragraph of said Section 27-21-02 providing that:

"Subject to the authority of the committing court and the Uniform Juvenile Court Act, the State Youth Authority shall retain jurisdiction of the child until he reaches the age of twenty-one years, and may change placement of the child at any time it appears to be in his best interest and in the best interest of the state.

The specific example you give is the case of an Indian child under the jurisdiction of the Juvenile Court who has been committed by the court to the State Youth Authority and placed by the State Youth Authority on a federal reservation in North Dakota.

Your questions are stated as:

"First does the State Youth Authority through its personnel have the authority to enforce rules of conduct for such child?

"Second, if the placement of the child on the federal Indian reservation deteriorates, does the State Youth Authority have authority to change the placement of such child either on or off the reservation?

"Third, does the State Youth Authority have the authority to bring such child back to the state juvenile court if the child refuses to leave the reservation for this purpose?"

The basic principle involved is, of course, that the State of North Dakota, its departments and agencies does not have jurisdiction over Indians in the Indian country. As a general rule of thumb, subject to numerous exceptions and variations, an Indian is a person enrolled on the tribal rolls as an Indian, and the Indian country is the Federal Indian Reservation.

Thus, all three of your questions must be answered in the negative, assuming, of course, that the child in question meets the legal definition of an Indian, duly enrolled as such.

HELGI JOHANNESON

Attorney General