

OPINION  
75-84

July 7, 1975 (OPINION)

Mr. Edwin F. Zuern  
Corrections Research Office  
Director of Institutions  
State Capitol  
Bismarck, ND 58505

Dear Mr. Zuern:

This is in response to your letter of June 2, 1975, wherein you request an opinion of this office upon the authority of the Director of Institutions to contract with the North Dakota Indian Tribal Councils or other authorized agency for the care and treatment of delinquent Indian youth. You submit the following facts and inquiry in your letter:

We seek your opinion on a policy decision, which has to be based on a legal question.

The North Dakota Tribal Courts desire use of the State Industrial School as a facility for the care and treatment of their juvenile delinquents.

Can the Director of Institutions under Section 54-21-25 of the North Dakota Century Code make a contract with the North Dakota Indian Tribal Councils or other authorized agency for the care and treatment at the State Industrial School of delinquent Indian youth who have been adjudicated as such by the Tribal Courts?

Section 54-21-25 of the North Dakota Century Code, as amended, provides as follows:

AUTHORITY TO CONTRACT WITH OTHER GOVERNMENTAL AGENCIES FOR PRISONERS. If the director of institutions determines that suitable state facilities or services are not available for inmates under his control he may contract for same with the proper authorities of the United States, another state, another agency in this state or a political subdivision of this state. The director may also contract, without cost to the state, to provide services or facilities for persons held by any of the jurisdictions mentioned in this section. (Emphasis supplied)

The resulting issue appears to be whether the North Dakota Indian Tribal Councils or the North Dakota Tribal Courts constitute a jurisdiction specified in the statute.

To the extent that Indian tribes within the state of North Dakota did not elect to accept civil jurisdiction within Indian reservations or Indian country, as amended, and the state of North Dakota does not have criminal jurisdiction over Indians for crimes committed upon the reservations or Indian lands, there can be little question but that the North Dakota Indian Tribal Councils or the North Dakota Tribal

Courts do not fall into the category of jurisdictions related to the state of North Dakota, specified in the statute.

It would appear, however, that the North Dakota Indian Tribal Councils and the North Dakota Tribal Courts are within and under the jurisdiction of the United States. Since the statute specifies also the United States, as it is our understanding that Indian tribes are under the jurisdiction of the United States government, it would appear that the Director of Institutions could contract, within the requirements and conditions of the statute, with the United States to furnish such services.

In direct response to your inquiry, we are of the opinion that the Director of Institutions may contract with the United States, by and through authorized personnel or agencies thereof, for the care and treatment at the State Industrial School of delinquent Indian youth who have been adjudicated as such by the Tribal Courts.

Sincerely,

ALLEN I. OLSON

Attorney General