STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-35

Date issued: December 30, 1994

Requested by: Henry C. Wessman, Executive Director
North Dakota Department of Human Services

- QUESTIONS PRESENTED -

I.

Whether North Dakota is obligated to provide mental health and chemical dependency services to tribal members who live in Indian country and are involuntarily committed by tribal court.

II.

Whether North Dakota is obligated to provide mental health and chemical dependency services to tribal members who voluntarily admit themselves to the State Hospital.

- ATTORNEY GENERAL'S OPINIONS -

I.

North Dakota is not obligated to provide mental health and chemical dependency services to tribal members who live in Indian country and are involuntarily committed by tribal court.

II.

North Dakota is obligated to provide mental health and chemical dependency services to tribal members who voluntarily admit themselves to the State Hospital.

- ANALYSES -

I.

White v. Califano, 437 F.Supp. 543 (D.S.D. 1977), aff'd 581 F.2d 697 (8th Cir. 1978), addresses the responsibility of states to provide mental health services to tribal members who reside on a reservation and who have been involuntarily committed by tribal court. The Califano case was brought on behalf of Florence Red Dog, an indigent member of the Oglalla

Sioux Tribe residing on the Pine Ridge Indian Reservation in South Dakota. 437 F.Supp. at 545. Red Dog was mentally ill and in need of immediate treatment. Id. The Indian Health Service (IHS) requested that South Dakota officials commit Red Dog to the State Human Services Center. Id. The state declined for jurisdictional reasons. Id. at 545-46. The tribal court then committed her to the custody of IHS "for commitment to the Human Services Center." Id. at 545-46. The state and federal government disagreed "as to which should pay for the care." 581 F.2d at 697. Thus, White v. Califano presented "the question whether the United States or the State of South Dakota must pay for emergency inpatient mental health care provided to Florence Red Dog . . . . " Id.

The district court concluded that the responsibility for care and payment rests solely with the federal government. The Court of Appeals affirmed. 581 F.2d at 698.

South Dakota's response to the action was to claim that it was without jurisdiction to provide the protection Red Dog demanded. 437 F.Supp. at 546. The district court analyzed traditional principles of Indian law to assess this claim, that is, it considered whether tribal sovereignty and federal law preempted state jurisdiction. Id. at 548. The court described the consequences if state authority were allowed:

> A person involuntarily committed is torn away from family, friends and community; after commitment the person may be allowed no greater liberty than a person convicted of a criminal offence. One can scarcely conceive how the power of the state can be brought to bear upon a person with any greater severity.

Id. at 549. The court concluded:

> [T]he state and county defendants . . . have no power to initiate or carry out the procedures for the [i]nvoluntary commitment of an allegedly mentally ill Indian person who resides in Indian country. The concept of tribal sovereignty . . . cannot coexist with the process and act of involuntary commitment by the power of the state under the circumstances presented in this case.

Id. at 550. There is no substantial difference between the South Dakota commitment procedures and consequences described in White v. Califano, id. at 548-49, and North Dakota

commitment procedures and consequences. See N.D.C.C. ch. 25-03.1.

Red Dog proposed that cooperation between tribal and state officials could avoid the jurisdictional problem. She suggested that after initial fact finding by the tribal court, the state "could either act upon the tribal court's findings or give a de novo hearing to determine the mental state of the person being [committed]." 437 F.Supp. at 550. The court rejected this process because it did nothing to address "intrusions [into tribal sovereignty] involved in the process of involuntary commitment and fact of involuntary commitment itself." Id.

The court turned next to the federal government's duty "to provide directly or by contract for inpatient mental health care to reservation Indians who require involuntary civil commitment . . . ." 437 F.Supp. at 551.

Citing a handful of federal laws and the federal government's trust responsibility to Indians, id. at 553-55, the court found "that Congress has unambiguously declared that the federal government has a legal responsibility to provide health care to Indians." Id. at 555. Furthermore, federal statutes and the federal government's historic role in providing for Indian health needs has preempted the field. Id. at 558-59. Therefore, South Dakota's lack of jurisdiction rests not only on the notion of tribal self-government but also on the proposition that state authority has been preempted by the federal government. Id. at 559.

In affirming the district court, the circuit court concluded that, because South Dakota lacks the power to initiate and carry out involuntary commitment of a mentally ill Indian residing in Indian country, "the law imposes no duty on the state to provide mental health care for "[such Indians]." 581 F.2d at 698. "[R]esponsibility for providing the necessary care [is] upon the United States." Id.

The reasoning for these conclusions is not founded upon anything unique in either the relationship between the United States and the Oglalla Sioux Tribe of the Pine Ridge Reservation, or between South Dakota and the tribe. Rather, White v. Califano rests on general principles that apply equally to North Dakota and to Indians residing in Indian country in North Dakota. Nor have I found any federal legislation that changes the result of White v. Califano or makes it inapplicable to North Dakota. Therefore, North

Dakota is not obligated to provide mental health and chemical dependency services to tribal members who reside on a reservation and are involuntarily committed by tribal court.

In 1981 the Wisconsin Attorney General was asked, with regard to the Menominee Tribe, almost the same question as that posed in this opinion. The Wisconsin Attorney General, following the reasoning of White v. Califano, reached the same conclusion as this opinion. Wisc. A.G. Opin. 57-81 (Nov. 3, 1981). The Attorney General, however, noted:

> This is not to suggest, however, that the State of Wisconsin, the Menominee Tribe and appropriate federal officials cannot cooperate to ensure that these types of services are made available to Menominee Tribe members. This could occur, for example, through the purchase of services from state government by the federal government in coordination with the exercise of tribal authority. Under such a contractual relationship jurisdictional authority over involuntary commitments would remain with the federal government or the tribal government throughout the period that care is provided in state operated facilities. C.f., Necklace v. Tribal Court of Three Affiliated Tribes, etc., 554 F.2d 845 (8th Cir. 1977).

Id. at 7. This advice applies as well to the North Dakota Department of Human Services, North Dakota Indian tribes, and the IHS.

II.

"Indians are generally entitled to the same rights and benefits as other American citizens and residents." Cohen's Handbook of Federal Indian Law 645 (1982 ed.). "An Indian thus is entitled to . . . state welfare benefits equally with other citizens of the State." Morton v. Ruiz, 415 U.S. 199, 208 n.11 (1974). Some of the case law expressing this proposition includes: Acosta v. San Diego County, 272 P.2d 92, 98 (Cal. 1954)(an Indian living on a reservation has an equal right to county welfare services); County of Blaine v. Moore, 568 P.2d 1216, 1222 (Mont. 1977)(indigent Indians are entitled to county welfare medical assistance); State Board of Public Welfare v. Board of Commissioners, 137 S.E.2d 801, 802-03 (S.C. 1964)(reservation Indians are entitled to the same welfare benefits received by non-Indians). North Dakota Indians, as citizens of the state, are entitled to the same

benefits as non-Indians. Therefore, since North Dakota is obligated to provide mental health and chemical dependency services to non-Indian citizens who voluntarily admit themselves to the State Hospital, N.D.C.C. ? 25-02-03, the state is likewise obligated to provide these services to its Indian citizens.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question is decided by the courts.

Heidi Heitkamp
Attorney General

Assisted by: Charles M. Carvell
Assistant Attorney General

CMC/dmm