

OPINION
53-44

August 26, 1953(OPINION)

GAME AND FISH

RE: Jurisdiction Over Indian Reservations

You have requested an opinion as to the jurisdiction of the State Game and Fish Department in an area which, although not original tribal land, has been purchased by the Federal Government and designated as a part of an Indian Reservation, and as to public access to such land.

The Organic Law of Dakota Territory (Act of March 2, 1861, chapter 83, 12 Statutes at Large 2390 provided that lands excluded by treaty with any Indian Tribe were not included as a part of Dakota Territory.

The Enabling Act (approved February 22, 1889; chapter 180, 25 Statutes at Large 676.) provided that the people of this state agree to forever disclaim all right and title to all lands owned or held by any Indian or Indian Tribes and that said Indian lands shall remain under absolute jurisdiction of Congress. This provision was adopted by the people of this state as a compact with the United States in Section 203 subdivision 2 of the North Dakota Constitution.

It appears therefore, that as to lands existing as Indian Lands on October 1, 1889, when the Constitution of North Dakota was adopted, and not subsequently released, the State Game and Fish Department has no jurisdiction to carry on transplanting programs or to enforce State Game and Fish laws.

However, it is my opinion that, unless a subsequent grant is made by the State of North Dakota, its sovereignty extends to all areas within the boundaries of this state which were not Indian lands on October 1, 1889, and that the federal government may not, by purchasing tax lands and declaring them to be a part of an Indian Reservation, thereby infringe upon the sovereignty of this state.

Further, it is my opinion that the State Game and Fish Department has the same jurisdiction over tax land purchased by the federal government and included as a part of an Indian reservation as it has over privately owned land in carrying out game and fish conservation projects and enforcing game and fish laws; and that an easement must be obtained from the federal government, as is necessary from any landowner, before public access to such area can be assured.

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Attorney General