

OPINION
53-91

April 24, 1953 (OPINION)

OIL AND GAS

RE: Indian Lands - Jurisdiction - State or Federal

We are in receipt of your letter of April 17, 1953, in which you ask about the application of state oil and gas conservation laws to drilling operations on Indian Reservations located in this state.

In the first instance we are confronted with Section 203, Article XVI of the Constitution of North Dakota, which reads in part:

" * * *Second. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by an Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; * * *"

Our Supreme Court has on occasion had opportunity to construe this particular section of our Constitution and it has concluded that this provision, embodying wording approximating that of the enabling act as passed by the U.S. Congress, was not intended to reserve exclusive jurisdiction in all things for the federal government. To quote from State v. Denoyer, 6 N.D. 586, 72 N.W. 1014:

"The United States retained all jurisdiction necessary for the disposition of the land and the title thereto; all jurisdiction necessary to enable it to carry out all treaty and contract stipulations with the Indians; all jurisdiction necessary to enable it to protect and civilize its unfortunate wards. But the state had jurisdiction to tax the property of its citizens within the reservation, to enter thereon for the purpose of enforcing, by levy and sale, the collection of such tax. It had jurisdiction to punish its citizens for crimes committed one against the other thereon. And the principle of these decisions logically and necessarily leads further, and gives the state the right to extend to its citizens lawfully upon such Indian lands all the privileges and immunities of the laws of the state, where the same in no manner conflict with the reserved jurisdiction of the United States."

The United States Supreme Court Case of Draper v. United States, 164 U.S. 241(1896), relied upon largely by the state court in the opinion previously referred to, seems to bear out by holding and dictum the principle as set out in the Denoyer case.

If, therefore, the United States had not acted to assume jurisdiction

in this respect, it would appear that state regulations as to oil and gas conservation might validly apply on Indian lands. See *Red Hawk v. Jones*, 278 Pac. 572,577 (Ore. 1929). We find, however, that the United States Department of the Interior, acting pursuant to authority devolved upon it by the United States Congress, has promulgated "Oil and Gas Operating Regulations, which are found in the Code of Federal Regulations, Title 30, Mineral Resources, Chapter II, Geological Survey, and which are applicable to lands "owned or controlled by the United States." These regulations were revised in 1942 and prior to that time the regulations were said to apply to "lands of the United States and to all Restricted Tribal and Allotted Indian Land." It appears quite conclusively, however, that the broadening of the applicability of these regulations in 1942 did not remove Indian lands from their scope. To the contrary, several references in the introductory sections are expressly made to Indian lands. (These regulations are also found at section 1012, in volume 6 of Summers on Oil and Gas.)

We are of the opinion, therefore, that the conservation laws and regulations of the State of North Dakota are superseded by the Oil and Gas Operating Regulations of the Department of Interior, as applied to restricted Indian land in this state, and that state laws and regulations pertaining thereto have no application on such lands.

It should be noted, however, that the only lands subject to the regulations of the Interior Department originally were "Restricted Tribal and Allotted Indian" lands, and we assume that the same is true under the new regulation. In the case of *Kenny v. Miles*, 250 U.S. 58 (1919), restricted lands were defined as "lands the alienation of which is subject to restrictions imposed by Congress to protect the Indians from their own incompetency." Under certain circumstances such lands are shed of their "restricted" capacity, this ordinarily being when the Indian has received a certificate of competency which empowers him to convey his land free of restriction. As to land which no longer is regarded as "restricted Indian land," the state conservation laws and regulations apply, of course, whether or not such land is located on an Indian reservations; or stated in another way, this means that our state conservation regulations would apply to all land on an Indian reservation, except that which is restricted Indian land.

In concluding, we should point out that the U.S. Congress in 1947 enacted a statute which provided in part:

"Pub. L. No. 336, 80th Congress, 1st. Sess.,
Section 11: All restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma; provided that no order of the Commission affecting restricted Indian lands shall be valid as to such lands until submitted to and approved by the Secretary of the Interior or his duly authorized representative."

Also, we are given to understand that the State of New Mexico has taken the position that its police power extends to oil and gas operations on federal as well as state land. However, it has not been necessary to the United States Geological Survey, by which the survey has adopted requirements to conform to state regulations. See

page 332 of Conservation of Oil and Gas, published by the Section of Mineral Law, American Bar Association, 1948.

It may, therefore, be possible that by Congressional enactment or by agreement with the Federal authorities in this state arrangements can be worked out which will operate to the best interests of the conservation of oil resources of this state whereby all lands located within the boundaries of this state will be subjected to the same oil and gas conservation regulations.

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