

OPINION
54-59

June 22, 1954 (OPINION)

INDIANS

RE: Jurisdiction - Insane

This office acknowledges receipt of your letter of June 14, 1954, asking for an opinion relative to a question of jurisdiction over insane Indians.

You put your questions as follows:

- "1. An insane Indian whose residence is in this county, but not on the Indian Reservation, and
2. An insane Indian who resides on the Turtle Mountain Indian Reservation in this county.

not withstanding that the United States Indian Bureau has at this time no contract with the State Board of Administration for the paying of the costs of custody of such Indians at the State Hospital?

In both cases the Superintendent of the Indian Reservation has asked the Insanity Board to act, and incidentally has agreed in a letter to reimburse or pay the County's share of all costs of commitment and custody at the State Hospital. I believe the Indian Bureau argues that they should not reimburse the State's share of costs on the grounds that the Indians are citizens of the United States and residents of the state of North Dakota. Why they do not use the same argument against the county as to Indians residing off the reservation I do not know."

As a basis for this opinion, we find it necessary to refer to the code of federal regulations under title 25, part 86 and we quote herewith the pertinent sections thereof.

"86.1 Sanity hearings. No Indian residing on any Indian reservation under the jurisdiction of the United States shall be placed in any hospital or other institution for the care and treatment of the insane except in pursuance of a sanity hearing and an order for commitment issued as provided in this part.

"86.2 Petition for commitment in local institutions. Upon petition of the spouse, a parent, brother, sister or child of full age or other next of kin of any Indian alleged to be insane for commitment of said Indian to any State Hospital or state institution for the care and treatment of the insane, the superintendent or other official in charge of the reservation, whenever he finds after due investigation that such course is justified, may arrange for such commitment in conformity with the laws of the state pertaining to such cases.

"86.3 Commitment in St. Elizabeths Hospital. Insane Indians

residing on Indian reservations under the jurisdiction of the United States may be committed to St. Elizabeths Hospital for the insane in Washington, D.C., by order of the Secretary of the Interior based on certificates of insanity issued as provided in this section:

- (a) A certificate of insanity must be made under oath by two reputable physicians appointed to conduct an examination of the alleged insane Indian by the Superintendent of the reservation on which such Indian resides. The physicians must be full time Bureau physicians or graduates of recognized medical schools or colleges, have the qualifications prescribed by law for the practice of medicine or surgery, and shall not be related by blood or marriage to such Indian nor to any person applying for a certificate of insanity."

Construing the above federal regulations in the light of our state laws, it is the opinion of this office that the county insanity board has no jurisdiction over Indians to determine their sanity or the commitment to a state institution. It will be noted in 86.1, of the federal regulation, that no Indian residing on any Indian reservation and who is an enrolled Indian may be placed in any institution for the care and treatment of insane persons except in pursuance to a sanity hearing and an order for commitment issued in accordance with these regulations.

Section 86.3, subsection (a) thereof provides for the appointment of a reservation insanity board by the superintendent thereof. The only question that might be in doubt is as to the construction of 86.2 of the said federal regulation wherein it is stated that upon certain conditions happening, the superintendent of the Indian reservation, or other official in charge of the reservation, upon due investigation, may arrange for commitment to an institution in conformity with the laws of the state in such cases. The crux of the problem then is based on a definition of the word "commitment". As we construe the word "commitment", it does not include a sanity hearing. It merely provides that a sanity board having jurisdiction may order the commitment, that is, the confinement of such insane Indian in a state institution under the provisions of the laws of this state.

In the case of State vs. Jackson, 16 NW 2d, page 752, you will find a discussion of many federal cases dealing with the question of jurisdiction. I direct your attention in particular to page 754 wherein the supreme court of the state of Minnesota, quoting several United States cases, holds that in the absence of a treaty or federal statute conferring jurisdiction, it does not extend over individual members of an Indian tribe maintaining their tribal relations and organizations upon the reservation within the geographic limits of the state. While this does not deal with the question of insanity, it does deal with the question of jurisdiction and we feel that the discussion therein justifies our holding that the county insanity board of Rolette County has no jurisdiction over a tribal Indian, especially when such Indian is on the reservation and is a ward of the government.

Answering specifically your question No. 2, "An insane Indian who resides on the Turtle Mountain Indian Reservation in this county", it is our opinion that the Rolette County Insanity Board has no jurisdiction to act upon the question of the sanity of any such Indian.

Answering your question No. 1, "An insane Indian whose residence is in this county, but no on the Indian reservation", will say that in addition to the facts you have presented, you informed the writer by telephone that such Indian was a tribal Indian properly enrolled in the tribe and was presently for the past two years living in an old folds home at Rolla supported by the welfare agencies of the state and federal government. Adding those facts to your question, we further hold that such sojourn outside of the reservation does not make such Indian a resident of Rolette County proper, but he remains a tribal Indian properly enrolled and subject to the jurisdiction of the Indian reservation and therefore the Rolette County Insanity Board has no jurisdiction to pass upon such person's sanity. In other words, the care of such person by the welfare agencies does not establish a residence in the county proper.

Dealing now with the question of commitment to a state institution in North Dakota, it is the opinion of this office that an Indian so ordered committed by the proper insanity board may be received in our state institution at Jamestown and receive the same treatment and under the same conditions as those received by any other citizen of Rolette County or the state of North Dakota, but we do hold that they are not entitled to any special privileges in the reduction of the cost of the care and keep of such Indian. We further hold that the board of county commissioners of your county are without jurisdiction to enter into any agreement with the superintendent of the Indian Reservation whereby it is agreed that the Indian Agency will take care of the costs to the County of Rolette. The fact of the matter is that no board of county commissioners nor insanity board establishes the cost of the care and keep of any person committed to the state institution at Jamestown. It is true that the legislature has fixed an arbitrary amount which they charge all counties as their share for the care and keep of such persons in the state institutions, but the cost of the care and keep of a person in such a state institution is not limited to the \$45.00 which the legislature has determined as the share the county shall bear. I direct your attention to section 25-0825 of the 1953 supplement to the North Dakota Revised Code of 1943, wherein it is specifically stated that the state has a claim against any inmate of such institution for such charges as it may have in addition to those that are allotted to the county. While it is there provided that they may collect the same from the patient after he is discharged or that the patient has died, this, in our opinion, does not mean that with patients who have the means whereby they can pay for such additional costs as there may be, may not be asked to pay such additional costs and in fact there are numerous instances in North Dakota whereby the person responsible for the patient, either the guardian or others responsible, do make larger payments than that provided as the county's share.

It is therefore the opinion of this office that prior to the commitment of a tribal Indian, properly enrolled in the tribe, the Federal Agency should have an agreement with the State Board of

Administration or the Superintendent of the institution in Jamestown providing for the care and keep of such person and agree on such amount as has been determined as the average cost of the care and keep of such insane person. We do know that in many instances the federal agencies have entered into such an agreement that does not only take care of the individual case, but all cases that may develop from that particular Indian Agency with which we are dealing.

You further ask a question as to what the responsibility is of the Rolette County Insanity Board if they have knowledge of the fact that there is in their county an insane Indian who may have dangerous inclinations, but who lives outside of the reservation. It is the opinion of this office that your responsibility has been given to the Indian Agency of the existence of such facts and further if such person is uncontrollable that he may be temporarily taken in custody by your county awaiting the further action by the Indian Agency. This does not mean that your insanity board would have any jurisdiction to pass upon such person's sanity or make any commitment to any state institution. If the agency refuses to care for such person, we believe it is proper for your officials to take the insane Indian and deliver him to the superintendent of the agency for such care as he may see fit.

ELMO T. CHRISTIANSON

Attorney General