OPINION
55-65

June 29, 1955 (OPINION)

INDIANS

RE: Reservations - Taxation of Personal Property

This is in reply to your request for our opinion in regard to taxing of personal property of Indians on the Fort Totten reservation.

You inform us first that these Indians refuse to sign the personal property tax returns and that you have suggested that the assessor sign the return indicating thereon the reason for the taxpayers not signing. Under the provisions of section 57-0236 and section 57-0237 of the North Dakota Revised Code of 1943, I believe there is no other solution to this problem.

You state further that the question has also arisen as to what extent the personal property should be assessed on some of the Indian people on the reservation insofar as many of them indicate that their personal property is not subject to assessment and that they will no doubt refuse to pay such personal property taxes.

You quote in your letter the exemption provided for under section 57-0208, subsection 4, N.D.R.C. 1943, exempting "property of Indians where the title of such property is inalienable without the consent of the United States secretary of the interior." Your inquiry, of course, relates to such personal property as is held by such Indians on the Fort Totten reservation not subject to such controls by the United States government.

We find no decision of our Supreme Court that would appear directly in point. In State v. Denoyer, 6 N.D. 586, the conclusion that the sixth section of the Dawes Act declares that the Indian relators there concerned were citizens of the United States, and that under the provisions of section 121 of the North Dakota Constitution, they would therefore, be deemed qualified electors as citizens of the United States. We find, however, that in apportioning representatives and direct taxes "Indians Not Taxed" must be excluded. (Section 2, Article I, U.S. Constitution.)

Other language of the court in the Denoyer case (supra) is of at least passing interest in consideration of the present case.

Thus, in that decision we have the statement of Judge Bartholomew, quoted, apparently with favor in State v. Lohnes, 69 N.W.2d. 508, and in State ex rel. Baker v. Mountrail County, 28 N.D. 389, 149 N.W. 120:

> These authorities establish firmly the proposition that the jurisdiction reserved by the Enabling Act was not an exclusive jurisdiction. It did not take Indian lands out of the jurisdiction of the state where located, in the sense that the lands in another state are excluded. The United States

> retained all jurisdiction necessary for the disposition of the lands and the title thereto; all jurisdiction necessary to enable it to carry out all treaty and contract stipulations with 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, and the collection of such tax. It had jurisdiction to punish its citizens for crimes committed one against the other thereon."

We have also the statement of the Supreme Court of this state in LaDuke v. Melin, 45 N.D. 355 that:

> We are of the opinion that the Fort Totten military reservation has ceased to exist; that the state may rightfully exercise political and governmental jurisdiction over the lands reserved for Indian school and Indian agency purposes, to the extent of including such territory within its political subdivisions for political and governmental purposes and that, hence, persons residing on such lands, possessing the qualifications of electors that are legal voters in the political subdivision in which such lands are included."

No federal statutory provision or treaty with any of the Indian tribes that we have been able to find specifically and in terms exempts the type of personalty here concerned from the operation of state tax statutes.

The provision of the Act of May 31, 1946 attempting to transfer to this state concurrent jurisdiction over criminal offenses by or against Indians on the Devils Lake Sioux Indian Reservation (60 U.S. Statutes at Large, page 229) in fact specifically confines the clause saving it form any effect on state taxation to protections afforded by federal law, contract, or treaty against the taxation or alienation of any restricted property.

Other statements in the State v. Lohnes case (supra) would appear to touch upon but not necessarily decide this question.

The other reasoning upon which it could possibly be held that such property would be exempt from taxation is that advanced in United States v. Rickert, 47 L. Ed. 532, at 538, in answer to the third question certified.

> The answer to this question is indicated by what has been said in reference to the assessment and taxation of the land and the permanent improvements thereon. The personal property in question was purchased with the money of the government and was furnished to the Indians in order to maintain them on the land allotted during the period of the trust estate and to induce them to adopt the habits of civilized life. It was, in fact, the property of the U.S. and was put into the hands of the Indians to be used in execution of the purpose of the government in reference to them. The assessment and taxation of the personal property would necessarily have the effect to defeat that purpose."

The closest measure of the extent of the protection of property under this reasoning would appear to be the statement in U.S. v. Pearson, 231 F. 270 (Feb. 18, 1916):

> I may say, however, that I am of the opinion that any property in the possession of these Indians, that cannot be so traced and identified as issue property, the increase of issue property, as property proceeds of the sale of issue property, property purchased with the proceeds of the sale of the increase of issue property, as property for which similar issue property has been exchanged for similar use, as the increase of property received in such exchange, as the increase of issue property exchanged for similar property for similar use, or property purchased with money given to the Indians by the United States is not impressed with the trust and therefore is subject to taxation."

That case, however, did not include any property taxable under such reasoning.

Cohen's handbook of Federal Indian Law (1941) states at page 262, (Section 4) (State Taxation of Personal Property):

> There are apparently no cases determining the right of the state to tax personal property of an Indian on a reservation which is not used pursuant to some federal plan. Apparently no state has attempted to collect such a tax. The doctrine that Indians on a reservation are not subject to state law in the absence of congressional authority would indicate that any such tax would be invalid."

It would appear to us, however, in view of our statutes exempting only particular property held by Indians from state taxation and also from what we understand of the customary practice of our taxing officials that this state has for a considerable length of time actually taxed personal property not under the control of the Secretary of the Interior. While under the State v. Lohnes (supra) and State v. Kuntz, 66 N.W. 2nd 531 cases, it does now clearly appear that the State of North Dakota does not have criminal jurisdiction over crimes allegedly committed by an enrolled Indian against an enrolled Indian on the Devil Lake Sioux Reservation and over crimes committed on the Fort Berthold Indian Reservation by one who is not an Indian against one who is an Indian, it does not as yet clearly appear that taxing power is necessarily dependent upon criminal jurisdiction of this state. There is at present a case pending in our Supreme Court involving the determination of whether the State of North Dakota has civil jurisdiction of torts between Indians on the Standing Rock Agency Reservation. The decision of that case will in our opinion be of great aid in the determination of the problem you present, although not necessarily of itself a final determination of the question.

In conclusion, it is our opinion that insofar as there is no decision of either the courts of this state or of the federal courts that would necessarily hold that Indian personal property not coming within the exemption afforded by subsection 4 of section 57-0208 at

least to the extent that such unrestricted property cannot be traced and identified as issue property, increase of issue property, property proceeds of the sale of issue property, property purchased with the proceeds of the sale of the increase of issue property, as property for which similar issue property has been exchanged for similar use, as the increase of property received in such exchange as the increase of issue property exchanged for similar property or property purchased with money given to the Indians by the United States, our taxing officials must under our statutes attempt by such means as customarily used to collect such taxes.

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