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NE. STATE OF NEBRASKA
OFFICIAL
JUL 25 1994
DEPT. OF JUSTICE

DATE: July 21, 1993

SUBJECT: Authority of county sheriff to serve civil process on enrolled members of Indian tribes on reservations

REQUESTED BY: Commission on Indian Affairs

WRITTEN BY: Don Stenberg, Attorney General
Joseph Loudon, Assistant Attorney General

You requested our opinion on whether the Thurston County Sheriff may serve civil legal papers on either the Winnebago or Omaha Indian reservation to enrolled tribal members without going through the tribal courts. Both the Omaha and the Winnebago tribes have reservations in Thurston county.

A county sheriff has the duty to serve all types of civil process. ***See, e.g.***, Neb. Rev. Stat. § 25-2233 (Supp. 1992). It is assumed that you are concerned with the Thurston County Sheriff entering the Omaha and Winnebago Indian Reservations and serving summons personally on enrolled tribal members or leaving the summons at such persons' residences. ***See*** Neb. Rev. Stat. §§ 25-505.01, 25-506.01 (1989) (authorizing service of summons in the manner stated). Though there may be other types of legal papers served by the sheriff in connection with civil litigation, the type of process served should not affect the answer to your question.

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In California v. Cabazon Band of Mission Indians, 480 U.S. 202, ____, 107 S.Ct. 1083, 1087, 94 L.Ed.2d 244, ____ (1987) (citation omitted), the Court stated: "'[T]ribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States.' It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided." "The modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power." ***McClanahan v. State Tax Commissioner of Arizona***, 411 U.S. 164, 93 S.Ct. 1257, 1262, 36 L.Ed.2d 129, ____ (1976) (citation omitted) (footnote omitted). ***See also Robinson v. Sigler***, 187 Neb. 144, 187 N.W.2d 756 (1971) (the inherent police power of the states applies both to Indians and to Indian country, except to the extent that the federal government has preempted the field, and therefore the federal government may withdraw from the field and turn jurisdiction back to the state when it chooses to do so).

In 1953, the federal government enacted Public Law 280 (hereinafter referred to as PL-280). Section 4(a) of PL-280, amended and codified at 28 U.S.C.A. § 1360 (West 1993), provides:

> Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:
> . . .
>
> Nebraska . . . All Indian country within the State.

In § 2(a) of PL-280, Congress further granted criminal jurisdiction to the State of Nebraska over Indian country located within the state. ***See*** 18 U.S.C.A. § 1162 (West 1984). In 1968, Congress enacted Public Law 90-284, now codified at 25 U.S.C.A. § 1323 (West 1983), which authorized the United States "to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant

to" PL-280. "Retrocession" is a state's return to the federal government of jurisdiction over criminal and/or civil matters previously granted to the state by Congress. ***United States v. Merrick***, 767 F.Supp. 1022 (D. Ne. 1991). By resolution, the Nebraska Legislature retroceded criminal jurisdiction, with a limited restriction, to the Omaha Tribe, ***see*** LR 37, 80th Legis., Neb. Legis. J. v.1, p. 1467 (1969), and to the Winnebago Tribe, ***see*** LR 303, 89th Legis., 2nd Sess., Neb. Legis. J. v.1, p. 91 (1986). ***See also, Omaha Tribe v. Village of Walthill***, 460 F.2d 1327 (8th Cir. 1972) (the Nebraska Legislature adopted a resolution ceding to the federal government all of the criminal jurisdiction over offenses committed by or against Indians in Thurston County, except motor vehicle offenses), ***cert. denied***, 409 U.S. 1107, 93 S.Ct. 898, 34 L.Ed.2d 687 (1973).

We are not aware of, nor did we discover, any retrocession of the civil jurisdiction granted to the State of Nebraska in PL-280. In view of the Legislature declining to retrocede civil jurisdiction to the tribes, we are left with the question of whether the activities of the Thurston County Sheriff are authorized by § 4(a) of PL-280. Our construction of the language of § 4 is controlled by the rule set forth in ***State v. Chambers***, 242 Neb. 124, 493 N.W.2d 328 (1992). In ***Chambers***, the Nebraska Supreme Court reaffirmed, "The controlling rule is that in the absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning; when the words of a statute are plain, direct, and unambiguous, no interpretation is necessary or will be indulged to ascertain their meaning." ***Id.*** at 125, 493 N.W.2d at 329. We believe that by the language used in § 4 of PL-280, Congress plainly, directly, and unambiguously provided that the civil laws of general application relating to civil litigation have the same force and effect within Indian country. The statute's language indicates that the Thurston County sheriff need only comply with this state's statutes governing service of process.

Our research has not uncovered a single Nebraska Supreme Court or U.S. Supreme Court decision resolving the precise question raised in your letter. The U.S. Supreme Court, however, on more than one occasion has offered guidance on the meaning of § 4(a) of PL-280. In ***California v. Cabazon Band of Mission Indians***, 480 U.S. 202, ____, 107 S.Ct. 1083, 1087, 94 L.Ed.2d 244, ____ (1987) (citations omitted), the Court asserted, "In ***Bryan v. Itasca***

County . . ., we interpreted § 4 to grant States jurisdiction over private civil litigation involving reservation Indians in state courts, but not to grant general civil regulatory authority." The ***Cabazon*** Court stated that "when a State seeks to enforce a law within an Indian reservation under the authority of Pub.L. 280, it must be determined whether the law is . . . civil in nature, and applicable only as it may be relevant to private litigation in state court." ***Id.*** at ____, 107 S.Ct. at 1088, 94 L.Ed.2d at ____. The Court, in ***Bryan v. Itasca County***, 426 U.S. 373, ____, 96 S.Ct. 2102, 2109, 48 L.Ed.2d 710, ____ (1976), declared that "the primary intent [of § 4 of PL-280] was to grant jurisdiction over private civil litigation involving reservation Indians in state court." It is clear that the Neb. Rev. Stat. § 25-505.01, 25-506.01 (1989) are civil in nature. The statutes prescribe the manner in which a summons is served in civil litigation. Sections 25-505.01 and 25-506.01 setting forth the manner in which a defendant is served legal process in a civil lawsuit are plainly relevant to private litigation in a Nebraska court.

We have not found a single case supporting the proposition that the Thurston County Sheriff must seek the assistance of tribal authorities in serving civil legal process on persons residing within the exterior boundaries of Indian country in Thurston County. Indeed, case law supports the opposite proposition. None of the cases found involved a state granted civil jurisdiction pursuant to federal statute, such as the grant under PL-280 to this state. Nevertheless, even when a federal statute was absent, a number of state courts have held that an Indian may be served legal process on a reservation in accordance with a state statute. ***See, e.g., State Securities, Inc. v. Anderson***, 506 P.2d 786 (N.M. 1973); ***LeClair v. Powers***, 632 P.2d 370 (Okla. 1981); ***In Interest of M.L.S.***, 458 N.W.2d 541 (Wis. Ct. App.), ***review denied***, 461 N.W.2d 446 (1990). In each of the cases wherein it was determined that an Indian could not be served legal process within the exterior boundaries of his or her reservation, the state involved did not have civil jurisdiction granted to it by the federal government. ***See, e.g., Francisco v. State***, 556 P.2d 1 (Ariz. 1976); ***Martin v. Denver Juvenile Court***, 493 P.2d 1093 (Colo. 1972); ***Commissioner of Taxation v. Brun***, 174 N.W.2d 120 (Minn. 1970). Because a federal cession of jurisdiction to the state was absent in ***Francisco***, ***Martin***, and ***Brun***, those cases are clearly distinguishable.

Based on the unambiguous language of § 4(a) of PL-280, the pronouncements of the U.S. Supreme Court as to the meaning of the section, and the case law from other states, we conclude that the sheriff of Thurston County may serve legal process within reservation boundaries on enrolled members of the Omaha or Winnebago Tribes without assistance from tribal authorities. We believe the law to be clear on this point and have simply stated the authority of the sheriff's office under the law. Of course, the sheriff's office and tribal authorities are free to make arrangements to reduce any friction so long as the process is served in a manner consistent with state law.

Respectfully submitted,

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APPROVED BY:

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14-026-10