

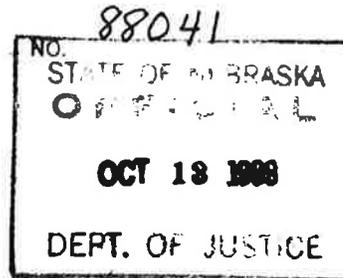
Linda

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General



DATE: October 12, 1988

SUBJECT: Off Reservation Hunting by Indians

REQUESTED BY: Brian C. Silverman  
Scotts Bluff County Attorney

WRITTEN BY: Robert M. Spire, Attorney General  
Linda L. Willard, Assistant Attorney General

You have requested an opinion on whether Sioux Indians who are enrolled with the Pine Ridge or Rosebud Tribes are required to obtain Nebraska fishing or hunting licenses for fishing or hunting in Nebraska. You have also inquired whether these individuals are subject to the game and fish laws of the State of Nebraska. Our response to both of these questions is yes. This opinion does not address the rights of Indians to hunt or fish on the reservation lands of other tribes located within the state.

The United States government entered into separate and individual treaties with numerous tribes. Many of the terms of these treaties were later altered by various congressional acts. Therefore, it is necessary to research the treaties and congressional acts relative to each individual tribe in order to determine the rights and privileges of that tribe. Additionally, in some instances, case law must also be studied since courts have made specific interpretations of these treaties and acts. In these cases, courts have at times restored access to traditional hunting or fishing sites to the tribes when the site

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Brian C. Silverman  
October 12, 1988  
Page -2-

had been utilized traditionally in providing for the livelihood of the tribe. See, United States v. Klamath and Moadoc Tribes, 304 U.S. 119 (1938).

The specific treaty governing the members of the Rosebud and Pine Ridge reservations was entered into by the United States and the Sioux--Brule, Ogalala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee--and Arapaho in 1868. This treaty has been affected by subsequent congressional acts. However, none of those acts deal specifically with hunting and fishing rights or privileges off the originally defined reservation. The treaty of 1868 determined the reservation for the aforementioned Indians would be an area

"commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and addition thereto, all existing reservations on the east bank of said river . . ."

to be set apart for the absolute and undisturbed use and occupation of these indians.

The treaty further stipulated at Article Eleven:

In consideration of the advantages and benefits conferred by this treaty, and many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside the reservation as herein defined but yet reserve the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River, so long as the buffalo may range thereon in such numbers as to justify the chase. . . .

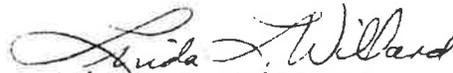
Brian C. Silverman  
October 12, 1988  
Page -3-

We know of no cases which specifically address the current rights of members of the aforementioned tribes to hunt on the specific lands as setout immediately above. However, it is the interpretation of this office that these rights are currently extinguished since buffalo, although they may graze on fenced range, no longer openly range these lands as the term 'range' was used at the time the treaty was signed.

There are, of course, other arguments for denial of off reservation hunting without a license that are included in the State's duties and responsibilities for the preservation and control of wildlife and game.

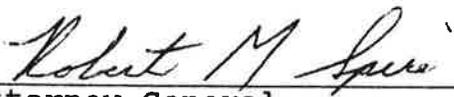
Sincerely yours,

ROBERT M. SPIRE  
Attorney General



Linda L. Willard  
Assistant Attorney General

Approved:

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Attorney General

28-48-3