

**OPINION
73-259**

August 27, 1973 (OPINION)

Mr. Kenneth Dawes
Director
North Dakota Combined Law
Enforcement Council
Bismarck, ND 58501

Dear Mr. Dawes:

This is in response to your letter in which you made reference to the opinion issued by this office dated August 1, 1973. You now ask for an opinion on the following questions:

1. Is it possible for an Indian reservation to submit itself to and accept state civil jurisdiction for the limited purposes of activities involved with a specific law enforcement council grant only without accepting state civil jurisdiction generally on all other matters?

- "2. If the answer to the question 1 above is yes, may such acceptance be accomplished by and through the actions and vote of the appropriate tribal council in a similar manner as an individual accepting jurisdiction for a specific purpose as provided for under section 27-19-05 by the filing of such a statement executed by the tribal council chairman in the appropriate county auditor's office?"

In answering your questions, it is necessary to examine the federal laws in addition to chapter 27-19.

Chapter 27-19 of the North Dakota Century Code was enacted pursuant to federal legislation in effect at the time (Public Law 280 of the 83rd Congress). Since then, the federal law has been amended by Public Law 90-284 and has been codified as 25 USC 1324 through 1326. Basically, the federal law permits the states to amend the Constitution where it is necessary to assume jurisdiction if the Indians, by an election, agree to come within the jurisdiction of the state.

The election of coming within the jurisdiction of the state as authorized by federal law does not contemplate piecemeal acceptance. Both the federal and state law contemplates the willingness of the Indians to come within the state jurisdiction and the acceptance of such jurisdiction by the state. Unilateral action is not sufficient, nor is piecemeal jurisdiction authorized or permitted.

In re Hankins' Petition, 125 N.W.2d. 839, the state of South Dakota attempted to obtain jurisdiction only on highways extending on, in and through Indian reservations. The South Dakota Supreme Court held that the state did not have authority to assume jurisdiction only on highways and the purported assumption of jurisdiction by the state of highways on the reservation was ineffective. The ruling took into account that the state action at that time was predicated upon Public

Law 280 which, of course, is the same law under which chapter 27-19 was enacted.

On the basis of the foregoing and in response to question number 1, it is our opinion that the state could not assume jurisdiction on limited basis or for specific purposes only. The provisions of chapter 27-19 and new federal enactments 25 USC 1324, et seq., do not authorize partial jurisdiction.

Because of the answer given to question number 1, there is no need to answer question number 2. However, as a note of interest, the U.S. Supreme Court, in *Kennerly v. Montana*, 27 L. Ed. 2d. 507, 400 U.S. 423, held that an election by the tribal council was not sufficient to bring the Indians under the jurisdiction of the State of Montana. The present federal law requires an election by the enrolled members as distinguished from tribal council action.

We trust this will be of assistance.

Sincerely yours,

Allen I. Olson

Attorney General