

Washington, D.C.
March 11, 1938

From: Superintendent, Sacramento Indian Agency
To: The Commissioner of Indian Affairs
Subject: Law and Order Among Indians of California

Dear Mr. Collier:

In November of 1936, in San Francisco, you authorized me to ~~initiate~~ initiate conversations with the several superintendents in California relative to my proposal that jurisdiction over law and order be transferred from the Federal government to the State of California. I attach my letter, with the replies received from Superintendents Gower, Dady, and Boggess; I have no reply from Superintendent Heller.

Superintendents Gower, Dady, Boggess, and myself are in agreement that the Indians of California should be put under State law; Mr. Boggess would limit liquor consumption to wine and beer outside the reservation.

Since the date of the above correspondence, however, the legal picture has changed radically. When an Indian is a party to ten specified crimes committed on an Indian reservation, including rights of way running through the reservation, the law (47 Stat. 233) provides that when the United States of America has exclusive jurisdiction. These crimes are:

1. murder
2. manslaughter
3. rape
4. incest
5. assault with intent to kill
6. assault with a dangerous weapon
7. arson
8. burglary
9. robbery
10. larceny

In 1936 no Indian superintendent in California considered a "rancheria" of purchased lands site as "Indian country". As Superintendent Boggess wrote on March 23, 1937:

Law and Order in California -2-

"We have always held here that the rancherias are not Indian country. I have talked to Mr Hjelm, the Assistant U.S. Attorney, and he practically agreed on that subject. The District Attorney for both of the counties in which we have rancherias located have been entirely willing to take cases to the State court for offenses committed on the rancherias."

But on January 3, 1938, the Supreme Court of the United States (US v. Fete McGowan) in the Reno Colony case decided, in effect, that every land purchase in California, - the number is over 100 and constantly increasing, - is Indian country. Said the court:

"The only question for determination is whether this colony is such Indian country."

And the conclusion was:

"When we view the facts of this case in the light of the relationship which has long existed between the government and the Indians - and which continues to date - it is not reasonably possible to draw any distinction between this Indian 'colony' and 'Indian country'."

Logic must extend the same legal concept to every five acre purchase for an individual Indian, if it be held in trust by the United States.

Now, as soon as the full import of the above Supreme Court decision becomes understood by the county District Attorneys and sheriffs, when they realize that the local officer has no right to go on a rancheria and make an arrest for any of the ten specified crimes, there inevitably will be created a twilight zone wherein many local law enforcement officers will be in doubt about jurisdiction as to all the lesser crimes. I could list many cases where sheriffs, game wardens, pound masters, as well as superintendents have been in doubt about jurisdiction in the past, with United States Attorneys equally at sea. We may now confidently expect confusion worse confounded.

For instance, does not the Supreme Court decision create in every California rancheria the no man's land implicit in Sections 217 and 218 of Title 25 U.S.C.?

217. Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country. (U.S. 2145)

Law & Order in California

-3-

215. The preceding section shall not be construed to extend to crimes committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(R.S. par 2146; Feb 15, 1875, c. 80, par 1, 18 Stat. 516)

Schmeckler wrote relative to the enumerated offenses over which the United States has exclusive jurisdiction (OFFICE OF INDIAN AFFAIRS; page 77):

THE OFFENSES ENUMERATED IN IT ARE THE ONLY ONES FOR WHICH SUCH INDIANS ON RESERVATIONS ARE ANSWERABLE IN THE COURTS IF THE OFFENSE IS AGAINST ANOTHER INDIAN.

I am advised by highly competent legal authority that that statement is as true today as the day it was written.

Turning from argument to action, I submit for your consideration the first rough draft of a bill which seems to me the proper way out. Have I your permission to discuss the matter with the Solicitor?

Respectfully submitted,

ROY NASH

Roy Nash, Superintendent

Copy to:

Supt. General
Supt. Dady
Supt. Boggess
Chas. de T. Albus, Esq

A BILL

Subjecting the Indians in California to the laws of that State.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED: That without in any manner impairing or otherwise affecting their right to tribal or other property the Indians in the State of California are hereby subjected to the laws of that State, civil and criminal, and the courts of said State, except as herein provided, shall have full and exclusive jurisdiction over all ^a matters, civil and criminal, affecting the Indians of said State or their property; Provided, however, that nothing herein contained shall be construed as giving to the courts of said State or depriving the Secretary of the Interior of his exclusive jurisdiction heretofore vested by law in the Secretary of the Interior to determine the heirs of deceased Indians or to approve or disapprove wills made by any Indian in said State insofar as the same is restricted property belonging to any such Indian decedent may be involved.

Referring to the Round Valley Constitution, in a letter Sep. 21, 1936, to Roy Nash, Supt., signed T.A. Walters, Acting Secretary of Interior:

"The inclusion of a section placing the Indians under the jurisdiction of the State of California, as requested by the Constitution Committee, which request was reported in your letter of July 22, could not be made as the transfer of jurisdiction over law and order from the Federal to the state government must be accomplished by an Act of Congress relinquishing jurisdiction and an act of the state legislature accepting jurisdiction."

Sacramento Indian Agency
California

December 3, 1936

SUBJECT: Law and Order

Glyde H. Gensler, Supt.,

Colorado River Agency

Dear Gensler:

After talking over the subject with Commissioner Collier last week, I am about to draw up a brief recommending that jurisdiction over law and order be transferred from the federal to the state government in California, to be accomplished by an act of Congress (which Congressman Lea will introduce) relinquishing jurisdiction, and an act of the state legislature accepting jurisdiction.

I am wondering if we are not in sufficient agreement so that a document can be drafted which all California superintendents will sign. If you disagree with me that Federal liquor prohibition is a farce and delusion and should be abandoned, we could put in separate recommendations on that controversial subject.

Mr. Collier suggested that perhaps the Yum Indians should be exempted. On that subject, and regarding other Colorado River Indians on the California side, I will follow your recommendation entirely.

Does any court of Indian Offenses function down there still? If not, when did it go out of business at Yuma?

Sincerely yours,

(SIGNED) Roy Nash, Supt.

Similar letters to:

Supt. Dady
Supt. Beggans
Supt. Rowler