

**OPINION
70-360**

January 2, 1970(OPINION)
Mrs. Agnes Geelan
Chairman
North Dakota Workmen's Compensation Bureau

RE: State - State Mine Inspector - Authority on Reservations

This is in response to your letter in which you make reference to Sections 38-04-02, 38-04-03 and 38-03-07 of the North Dakota Century Code, relating to the duties and responsibilities of the State Mine Inspector. You also forwarded for our consideration a letter written to Mr. Rudolph Iszler, the State Mine Inspector, dated May 9, 1969, by Mr. Paul A. Ewald, Economic Development Specialist, in which several questions are raised and assertions made. You then ask for an opinion on the following questions:

- 1) Is our Coal Mine Inspector empowered to receive licenses and make safety inspections of coal mines operating in Indian territory?
- 2) Are such mines subject to Workmen's Compensation coverage?"

Initially the jurisdiction of the State on Indian reservations is limited. Section No. 203 of the North Dakota Constitution, in part, and as is material here, provides as follows:

* * * The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, provided, however, that the Legislative Assembly of the State of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress; * * *."

In 1963 the North Dakota Legislature enacted Chapter 27-19 of the North Dakota Century Code, which prescribes the methods which may be employed by Indians, either individually or collectively, in accepting jurisdiction of this State. Chapter 17-19 was enacted pursuant to authority contained in Public Law No. 280 of the 83rd Congress. Section 27-19-02 of the North Dakota Century Code specifically sets forth the manner in which jurisdiction may be accepted by Indians on a reservation. Section 17-19-05 of the North Dakota Century Code provides the manner in which an individual Indian may accept State jurisdiction.

The Congress has on occasion enacted specific legislation authorizing certain activities or extending State jurisdiction to Indian lands. It gave the State authority to inspect health and welfare matters in

the schools under 25 U.S.C.A. 231, but this provision is limited to educational facilities and does not include mining operations. 40 U.S.C.A. 290 was enacted by Congress to extend Workmen's Compensation Laws to Federal lands and projects. The extension of the State Workmen's Compensation Law to the Federal lands pertains to projects, buildings, constructions, improvements, and properties belonging to the United States of America. The Federal Act, however, does not cover or relate to Indian activities on an Indian reservation. (See Swatzell v. Industrial Commission, 277 Pac. 2d. 244 (Ariz.).) In the cited case the Court said that Indian activities or enterprises are not included within the term "federal land or projects" unless it specifically includes Indian activities by other specific language.

This office, on a previous occasion, concluded that the State Plumbing Board had no jurisdiction for purposes of inspecting plumbing on Indian reservations, and that the State Electrical Board did not have jurisdiction to inspect electrical wiring and other related matters on Indian reservations.

We are not aware of any Federal Act which extends jurisdiction to the State to inspect mines located and operating on Indian reservations. Your letter does not indicate that the Indian tribe did or did not accept jurisdiction as provided for in Chapter 27-19 of the North Dakota Century Code. We are assuming that no acceptance was accomplished by any of the methods outlined in Chapter 27-19.

It is, therefore, our opinion that the North Dakota State Coal Mine Inspector does not have authority or jurisdiction to inspect coal mines located and operating in Indian territory, nor is he empowered or authorized to require such coal mines to be licensed through the State licensing program.

As to Workmen's Compensation, in addition to the above discussion it is noted that Congress has enacted a law authorizing the use of tribal funds for the purchase of insurance against fire, theft, tornado, or against injuries or damages, (see 25 U.S.C.A. 123A). While this section might authorize the Indian tribe to purchase insurance, which could include Workmen's Compensation insurance, it does not serve as extending jurisdiction to the State so as to make it compulsory to come under the North Dakota Workmen's Compensation Act, (Title 65 of the North Dakota Century Code). In this respect, it is noted that Chapter 65-07 of the North Dakota Century Code authorizes the Bureau to enter into separate contracts with employers for Workmen's Compensation coverage in those instances where it is not mandatory for the employer to come within the Workmen's Compensation Act. The net effect of the provisions of the Federal Act, 25 U.S.C.A. 123A, and Chapter 65-07 of the North Dakota Century Code is that the Indian tribe and the Bureau could enter into separate contracts for Workmen's compensation coverage. However, this would have to be on a voluntary basis. We would further note that even though a separate contract was entered into between the Bureau and the Indian tribe, such contract does not serve as extending jurisdiction to the State of North Dakota or the Workmen's Compensation Bureau for purposes of collecting premiums if not paid, or other matters arising out of such transaction.

It is also our opinion that mines operated in Indian territory do not

come within or under the North Dakota Workmen's Compensation Act, except where the employer and the Bureau have entered into a voluntary agreement.

As has been mentioned, such agreement does not serve as extending jurisdiction to the tribe or to the individual Indians, consequently the collection of premium and other related matters would have to be on a voluntary basis - at least until the tribe, or in the case of single employer, the individual Indian accepted jurisdiction as provided for by Chapter 17-19 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General