

CRIMINAL PROCEEDINGS : Prosecution of an Indian,
ward of Federal government
as any other citizen

June 22, 1938

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Hon. Douglas Mahnkey
Prosecuting Attorney
Taney County
Forsyth, Missouri

Dear Sir:

We have your request of June 18th for an opinion
on the following two questions:

First, Is an Indian, a ward of the Federal Government,
subject to the criminal laws of this State against writing
bad checks?

Second, Who has the right to parole a prisoner serving
a sentence imposed in the Justice Court?

I.

IS AN INDIAN SUBJECT TO THE CRIMINAL
LAWS OF THIS STATE?

This identical question appears to have been raised
and passed on in State vs. Big Sheep, 243 Pac. 1067. It appears
that the defendant, Big Sheep, while at the home of one Austin
Stray Calf, was charged with the illegal possession of peyote,
botanically known as Lophophora Williamsii. Objection was
made to the jurisdiction of the court on the ground that the
defendant, at the time and place mentioned in the complaint, was
an Indian, a member of the Crow Tribe, and that the acts alleged
to constitute the offense were done upon land within the Crow
Indian Reservation, the title to which still remained in the
United States. The Court held that the State had jurisdiction
of the prosecution of an Indian Ward of the Government for a
crime committed on land to which the United States had relinquished
title.

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The above general rule appears to be borne out by the following cases, especially where the offenses are committed off of Indian Reservations: United States vs. Sa-Coo-Da-Cat, (CC. Wis. 1870) Fed. Case No. 16212; State vs. Williams, 43 Pac. 15, 13 Wash. 335; In Re: Wolfe, 27 Fed. 606; State vs. Spotted Hawk, 55 Pac. 1026, 22Mont. 23; State vs. Ta-Cha-Ha-Tah, 64 N.C. 614.

CONCLUSION

It is therefore the opinion of this office that an Indian, committing a crime in the State of Missouri, is subject to be prosecuted under the criminal code of this State.

II.

POWER TO PAROLE PERSONS CONVICTED
IN THE JUSTICE COURT.

On August 16, 1937, in an opinion of this office to Honorable James L. Williams, Sheriff of Jackson County, Missouri, we had occasion to consider the authority of a justice and circuit judge to deal with offenders serving time under the sentence of the justice court. That opinion deals with the right of the justice to grant a stay of execution, commute sentences, paroles, etc., and we think it is decisive of the question presented by your letter. We are enclosing copy of that opinion herewith.

Respectfully submitted,

APPROVED:

FRANKLIN E. REAGAN,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

FER:MM
Enc.