

October 14, 1994

Mr. Herb Carlson, Chairman
Idaho Industrial Commission
P.O. Box 83720
STATEHOUSE MAIL
Boise, ID 83720-0041

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Mr. Carlson:

You have asked our opinion regarding the enforcement of Idaho Code § 72-301 on Indian reservations. Specifically, you have asked whether the Industrial Commission has the authority to maintain a suit in a state district court to compel an employer on a reservation to meet the provisions of Idaho Code § 72-301 and, further, how that state court judgment would be enforced on a reservation.

I.

**THE APPLICABILITY OF IDAHO CODE § 72-301 ON INDIAN
RESERVATIONS**

As you noted in your letter, this office issued an opinion in 1988 regarding the applicability of Idaho Code § 72-301 against Indian employers doing business within a reservation. *See* 1988 Idaho Att'y Gen. Ann. Rpt. 34, a copy of which is enclosed for your reference. At that time, we concluded that Idaho Code § 72-301 generally would be applicable to employers doing business within a reservation. However, we also concluded that such would not be the case if the employer were either the tribal government or a tribally owned business. It was our opinion at that time that the doctrine of sovereign immunity would preclude the Idaho Industrial Commission from bringing an action against either a tribal government or tribally owned business. *See Tibbetts v. Leech Lake Reservation Business Committee*, 397 N.W.2d 883 (Minn. 1986); *White Mountain Apache Tribe v. Industrial Commission of Arizona*, 696 P.2d 223 (Ariz. Ct. App. 1985).

I have reviewed our 1988 opinion and the case law cited therein. Despite the passage of time, I find little change in the law. The cases relied upon in our opinion appear to remain the primary cases in this area.

As we noted in 1988, 40 U.S.C.A. § 290 (1978) extends application of a state's workers' compensation laws to all lands owned or held by the United States within the exterior boundaries of a state. Usually, federal laws of general application such as 40

U.S.C.A. § 290 apply to Indians on reservations and to their property interests. However, there are three exceptions to this. A federal statute of general applicability will not apply to the activities or property interests of Indians on reservations where: (1) Congress expressed an intent that the law not apply to Indians on their reservations; (2) application of the law would abrogate treaty rights guaranteed to Indians; or (3) the law concerns rights of tribal self-governance in purely intramural matters. Donovan v. Coeur d'Alene Tribal Farm, 751 F.2d 1113 (9th Cir. 1985).

In our 1988 opinion, we reviewed each of these exceptions and concluded they did not apply. With regard to the first exception, an expression of congressional intent that the law not apply to Indians on their reservations, we noted that both federal and state courts had already recognized that section 290 authorizes application of state workers' compensation laws to all United States territories within a state, including Indian reservations. Begay v. Kerr-McGee Corp., 682 F.2d 1311, 1319 (9th Cir. 1982); Johnson v. Kerr-McGee Oil Industries, Inc., 631 P.2d 548, 551 (Ariz. Ct. App. 1981), *appeal dismissed* 454 U.S. 1025, 102 S. Ct. 560, 70 L. Ed. 2d 469 (1981); White Mountain Apache Tribe v. Industrial Commission of Arizona, 696 P.2d 223, 227 (Ariz. Ct. App. 1985). Turning to the second exception, the abrogation of treaty rights of Indians, we relied upon the reasoning of Johnson v. Kerr-McGee Oil Industries, Inc. to conclude that application of the federal law would not lead to such abrogation. We also noted that the appeal from Johnson had been dismissed by the United States Supreme Court for want of a substantial federal question and that such dismissals are binding upon lower courts until later doctrinal developments indicate to the contrary. Finally, we concluded the third exception, concerning rights of tribal self-governance in purely intramural matters, was also inapplicable. In regard to the third exception, the precedent was somewhat vague as none of the cases specifically addressed Indian employers who were sued, but instead dealt with claims brought by Indian employees against non-Indian employers who operated businesses on an Indian reservation. However, we nevertheless concluded it would be "unlikely that a court would find that tribal interests in self-government would change significantly or somehow be improperly infringed upon or frustrated simply because a tribal member is an employer rather than an employee." 1988 Idaho Att'y Gen. Ann. Rpt. at 38. In short, it was our opinion that none of the three exceptions to enforcing a federal law of general applicability on an Indian reservation applied. Consequently, we reasoned that 40 U.S.C.A. § 290 and, by extension, Idaho Code § 72-301 would apply to businesses on Indian reservations.

Our research has shown little development in this law. We believe the third exception, Indian self-governance, remains the strongest basis for arguably not applying Idaho Code § 72-301 to businesses operating within Indian reservations. However, because there has been little additional case law since 1988 and because the state has strong interest in ensuring that all employees are covered by industrial insurance, this office adheres to the conclusion it reached in 1988.¹

We repeat one final caveat. In your question, you asked only about businesses owned by tribal members. As noted above, if the employer were either the tribe itself or a tribally owned business, then sovereign immunity would bar the Industrial Commission from bringing such an action. Otherwise, as discussed, section 290 should apply to employers doing business on a reservation.

II.

ENFORCEMENT OF STATE JUDGMENT

Your next question involves the enforcement of a state court judgment. You have asked how, assuming a state court has jurisdiction over an underlying claim, the state court's judgment is enforced.

Jurisdiction over an underlying claim does not automatically give a state court the ability to enforce its judgment on an Indian reservation. In Joe v. Marcum, 621 F.2d 358 (10th Cir. 1980), for example, the 10th Circuit Court of Appeals held that it would impinge on tribal sovereignty to allow a state court to run a garnishment against a Navajo Indian's employer and attach wages earned by the Indian for on-reservation labor when the tribal code had no garnishment procedure. The court reached this conclusion even though the state court had jurisdiction over the underlying claim and the garnishment proceedings arose from an off-reservation transaction with a non-Indian lending agency. Likewise, in Begay v. Roberts, 807 P.2d 1111 (Ariz. Ct. App. 1990), a state court action of issuing writs of garnishment against the wages of an Indian who lived and worked on the reservation was held to be preempted by tribal law and to infringe upon Navajo sovereignty, even though the state court had jurisdiction over the underlying action. *But see* Little Horn State Bank v. Stops, 555 P.2d 211 (Mont. 1976) (writs of execution from a state court are valid within an Indian reservation when such is a means of enforcing a valid judgment of the state court).

A recent Idaho case that bears upon this issue is State v. Mathews, No. 20154, 1994 WL 376131 (July 18, 1994), the recent search and seizure opinion from the Idaho Supreme Court. In Mathews, the Idaho Supreme Court held that a search warrant issued by a state judge must be approved by a tribal court before it can be executed. According to the Idaho Supreme Court, execution of the warrant without tribal court authorization directly infringed on the tribe's sovereign right to self-government. While this is a criminal and not a civil case, it certainly highlights the deference paid, in Idaho, to the Indian tribes' right of self-government. This is simply not a state where a court is likely to treat lightly the enforcement of state court judgments on Indian reservations without some involvement of the Indian courts.

We have contacted two tribal attorneys and asked each of them how a valid state court judgment would be enforced on an Indian reservation. Douglas Nash, the attorney

for the Nez Perce Tribe, informed us that the Nez Perce Tribe has a procedure whereby state judgments are recognized by a tribal court in a manner similar to how this state would recognize foreign judgments. That state court judgment is then treated like a tribal court judgment and is enforced by the tribal court.

We also consulted with Jeanette Wolfley, the attorney for the Shoshone-Bannock Tribes. She gave us similar advice. She stated that one would have to look at the specific procedures for each tribe. But she also said the Shoshone-Bannock Tribes have a procedure in place whereby state court judgments are filed with the tribal court and then enforced by that court. She did note that judgments must be valid state court judgments and that the tribal court is free to review state court jurisdiction over the underlying claim.

In short, it appears that once a district court judgment is entered, with some variation allowed for the specific tribal procedure, that judgment should be filed with the tribal court and that court, after reviewing the state court's jurisdiction, would enforce the state court judgment.

I hope this information is of use to you. If you have any questions, please contact me and I will try to be of further assistance.

Yours very truly,

DAVID G. HIGH
Deputy Attorney General
Chief of Civil Litigation

¹ In our 1988 opinion, we also noted that the self-governance exception might become applicable if a tribal governing body had enacted its own comprehensive workers' compensation scheme. Now, as then, we are not aware of any tribal government that has adopted its own comprehensive workers' compensation scheme but, if one has, this could change the analysis.