

If Indian land in urban areas is not subject to such regulation, the health of many persons living adjacent to such land can be endangered without state government being able to take appropriate action. The ability of the state of New Mexico to assume such jurisdiction is clear under the doctrine set forth in *Organized Village of Kake v. Egan*, 360 U.S. 60.

While Public Law 83-280 was enacted under the assumption that states such as New Mexico would have to amend their constitutions to assume jurisdiction, the 1961 Supreme Court decision cited above seriously challenges this assumption.

The Alaska Statehood Act and the Alaska Constitution provided that the United States retained "absolute jurisdiction and control of Indian property (including fishing rights)." The State of Alaska had attempted to invoke state police power jurisdiction to regulate use of salmon traps by the Kake Village Indians. The Indians claimed they were outside state regulatory jurisdiction. The United States, on behalf of the Indians, argued that the legislation in the Alaska Constitution and Statehood Act prohibited the state from any regulation of Indian fishing rights. Justice Frankfurter, writing for the majority, held as follows:

"The principal dispute now concerns the meaning of Section 4 of the Statehood Act in which the State disclaimed all right and title to and United States retained 'absolute jurisdiction and control' over any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, Aleuts (hereinafter called natives) or is held by the United States in trust for such natives. 396 U.S. 60, al 69."

Justice Frankfurter then goes on to point out that the parties were proceeding on the assumption that if the Kake Indians had "fishing rights" within the meaning of Section 4 of the Statehood Act, then the State could not apply its law.

"The assumption is erroneous. Although the reference to fishing rights is unique, the retention of 'absolute' Federal jurisdiction over Indian lands adopts the formula of nine prior Statehood Acts. Indian land has always remained 'under the absolute jurisdiction and control of the United States.' 36 Stat. 557, 569; yet in *Williams v. Lee*, 358 U.S. 217, 220, 223, we declared that the test of whether a State law could be applied on Indian-reserved land was whether the application of that law could interfere with reservation self-government. The identical language appears in *Montana's Statehood Act*, 25 Stat. 676, 677. In *Draper v. United States*, 164 U.S. 240, the Court held that a non-Indian who was accused of murdering another non-Indian on the Montana reservation could be prosecuted only in the State courts. The Montana statute applies also to North Dakota, South Dakota, and Washington. *Identical provisions are found in the acts admitting New Mexico*, (36 Stat. 557, 558-559) and Utah (28 Stat. 107, 108) and in the Constitution of Idaho . . . and Wyoming . . . which were ratified by Congress. . . .

"*Draper* and *Williams* indicate that 'absolute' federal jurisdiction is not invariably exclusive jurisdiction. The momentum of substantially identical past admission legislation touching Indians carries the settled meaning governing the jurisdiction of states over Indian property to the Alaska Statehood Act in light of its legislative history.

"The disclaimer of right and title by the state was a disclaimer of proprietary rather than governmental interest. It was determined, after some debate, to be the best way of insuring that statehood would neither extinguish nor establish claims by Indians against the United States."

Mr. Justice Frankfurter proceeded to review the history of the legal relation of Indians to the various states and pointed out that the strong tendency of Congressional action was toward permitting the ever broader assumption of authority by the states over Indians within their boundaries. He quoted with approval the following language of *New York, ex rel Rays vs. Martin*, 324 U.S. 496, 499: "In the absence of a limiting treaty obligation or congressional enactment, each state had a right to exercise jurisdiction over Indian reservations within its boundaries."

Mr. Justice Frankfurter sums up his decision in these words:

"These decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a right granted or reserved by Federal law."

On the basis of this decision of the Supreme Court, it can be argued that contrary to the assumption of the drafters of Public Law 280 as it now stands, the