

1990

State of Utah v. James F. Gardner : Unknown

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Unknown.

Unknown.

Recommended Citation

Legal Brief, *Utah v. Gardner*, No. 900379 (Utah Court of Appeals, 1990).
https://digitalcommons.law.byu.edu/byu_ca1/2755

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

OFFICE OF
THE ATTORNEY GENERAL



STATE OF UTAH

UTAH
DOCUMENT
K F U

50

R. PAUL VAN DAM - ATTORNEY GENERAL

FEB 19 1992

A.10

DOCKET NO. 900379 CA
SALT LAKE CITY, UTAH 84114 • TELEPHONE 801-538-1015 •

February 19, 1992

Mary T. Noonan
Clerk of the Court
JOSEPH E. TUCKER
CHIEF DEPUTY ATTORNEY GENERAL
Utah Court of Appeals

Mary T. Noonan, Clerk
Utah Court of Appeals
230 South 500 East #400
Salt Lake City, Utah 84102

Re: State v. James F. Gardner
Court of Appeals No. 900379-CA

Dear Ms. Noonan:

Pursuant to Rule 24(j), Utah Rules of Appellate Procedure, I wish to direct the Court's attention to supplementary authorities in regard to the above case, set for oral argument Wednesday, February 26, at 9:00 AM.

First, at page 8 of the State's brief, first full paragraph, discussing judicially-created exceptions to exclusive federal jurisdiction over Indian country, see also Draper v. United States, 164 U.S. 240, 17 S. Ct. 107 (1896), and State v. Roedl, 107 Utah 538, 155 P.2d 741, 743-44 (1945) (state constitutional disclaimers of authority over Indian lands do not bar state criminal jurisdiction over crimes committed on Indian lands by non-Indians).

Second, at page 8, last full paragraph, discussing the Ute Indian Tribe's self-limited jurisdiction over criminal matters, see also Ute Tribe Law and Order Code, §§ 1-2-3, 1-2-5, and 1-2-6. Photocopies of these materials are included for the Court's convenience. Unfortunately, the Tribe Code volume available to my office is undated, so I am unable to confirm that the copied materials fully reflect current tribal law.

Yours,

J. Kevin Murphy
Assistant Attorney General

cc: James F. Gardner, pro se
P.O. Box 250
Draper, Utah 84020

THE LAW AND ORDER CODE
OF THE
UTE INDIAN TRIBE
OF THE
UINTAH AND OURAY RESERVATION
UTAH



FORT DUCHESNE, UTAH 84026

PREAMBLE

This Law and Order Code for the Ute Indian Tribe of the Uintah and Ouray Reservation is established for the purposes of strengthening Tribal self-government, providing for the judicial needs of the Reservation, and thereby assuring the maintenance of law and order on the Reservation.

TITLE I. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§1-1-1 Constitutional Authority.

This Law and Order Code is adopted pursuant to the authority vested in the Tribal Business Committee under Article VI of the Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation.

§1-1-2 Name of Code.

This Law and Order Code shall be known as The Law and Order Code of the Ute Indian Tribe of the Uintah and Ouray Reservation and may be referred to as the Ute Law and Order Code, or Law and Order Code, and may be abbreviated as the U.L.O.C. Sub-codes and rules included herein may be cited by the name given in the sub-code or rule heading.

§1-1-3. Prior Inconsistent Ordinances Repealed.

Any and all ordinances of the Tribal Business Committee which conflict in any way with the provisions of this Law and Order Code are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit and/or purpose of this Law and Order Code.

§1-1-4. C.F.R. No Longer Applicable.

Any and all provisions of the Code of Federal Regulations, Title 25, Part II, as presently constituted or hereafter constituted which deal with subjects covered in this Law and Order Code or are otherwise inconsistent with or in conflict with the provisions of this Law and Order Code or the purpose and/or spirit of this Law and Order Code are declared to be no longer applicable to the Uintah and Ouray Reservation.

§1-1-5 Amendment of Law and Order Code.

This Law and Order Code may be amended, additions made hereto, or deletions made herefrom in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Law and Order Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization hereof.

CHAPTER 2. JURISDICTION

§1-2-1. Jurisdiction - Tribal Policy.

It is hereby declared as a matter of Tribal policy and legislative determination, that the public interest and the interests of the Ute Indian Tribe demand that the Tribe provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe as set forth in Article I of the Constitution of the Ute Indian Tribe with an effective means of redress in both civil and criminal cases against members and non-Tribal members who through either their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with this Reservation and/or its residents commit criminal offenses against the Tribe or incur civil obligations to persons or entities entitled to the Tribe's protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contact and interaction between the Tribe, its members, and other residents of the Reservation and other persons and entities over which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Law and Order Code, to insure maximum protection for the Tribe, its members and other residents of the Reservation, should be applied equally to all persons, members and non-members alike.

§1-2-2. Territorial Jurisdiction.

(1) The Jurisdiction of the Courts of the Ute Indian Tribe shall extend to the territory within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882, and by the Acts of Congress approved May 27, 1902, June 19, 1902, and March 11, 1948, and to such other lands without such boundaries as have been or may hereafter be added to the Reservation or held in trust for the Tribe under any law of the United States or otherwise.

(2) The jurisdiction of the Courts of the Ute Indian Tribe shall extend beyond the territorial limitation set forth next above, to effectuate the jurisdictional provisions set forth below, to the greatest extent permissible by law.

§1-2-3. Personal Jurisdiction.

(1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

(2) Subject to any contrary provisions, exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in this Law and Order Code, the Courts of the Ute Indian Tribe shall have civil and criminal jurisdiction over the following persons:

A. Any person residing, located or present within the Reservation for:

- i) Any civil cause of action; or
- ii) Any charge of criminal offense prohibited by this Code or other ordinance of the Tribe when the offense is alleged to have occurred within the Reservation.

B. Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly prohibited by this Code or other ordinance of the Tribe arising from such business or activity.

C. Any person who owns, uses or possesses any property within the Reservation, for any civil cause of action or charge of criminal offense prohibited by this Code or other ordinance of the Tribe arising from such ownership, use or possession.

D. Any person who commits a tortious act or engages in tortious conduct within the Reservation, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

E. Any person who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

- i) The conduct occurs either wholly or partly within the Reservation; or
- ii) The conduct which occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Reservation; or
- iii) The conduct which occurs within the Reservation constitutes an attempt, solici-

tion, or conspiracy to commit in another jurisdiction an offense prohibited by this Code or ordinances of the Tribe and such other jurisdiction.

(3) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

§1-2-4. Jurisdiction Over Property.

Subject to any contrary provisions, exceptions, or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Law and Order Code, the Courts of the Ute Indian Tribe shall have jurisdiction over any real or personal property located on the Reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable.

§1-2-5. General Subject Matter Jurisdiction; Limitations.

Subject to any contrary provisions, exceptions, or limitations contained in either federal law, or the Tribal Constitution, the Courts of the Ute Indian Tribe shall have jurisdiction over all civil causes of action, and over all offenses prohibited by this Code except the Courts of the Ute Indian Tribe shall not assume jurisdiction over any civil or criminal matter which does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or a member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected.

§1-2-6. Concurrent Jurisdiction.

The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

§1-2-7. Exclusive Original Jurisdiction.

(1) The Courts of the Ute Indian Tribe shall have exclusive original jurisdiction in all matters in which the Ute Indian Tribe or its officers or employees are parties in their official capacities.

(2) Nothing contained in the preceding paragraph or elsewhere in this Law and Order Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such.

CHAPTER 3. ESTABLISHMENT OF COURTS; JUDGES AND OTHER COURT PERSONNEL.

§1-3-1. Courts Established.

(1) There is hereby established a Ute Indian Appellate Court, which may be referred to as the Appellate Court, to handle all appeals from the Tribal Juvenile Court and Tribal Court as provided elsewhere in this Law and Order Code. The Appellate Court shall consist of three justices.

(2) There is hereby established a Ute Indian Tribal Court, which may be referred to as the Tribal Court, to handle all matters of a judicial nature not specifically placed within the jurisdiction of some other judicial forum. The Ute Indian Tribal Court shall be a court of general civil and criminal jurisdiction and shall hear appeals from all Tribal administrative bodies.

(3) There is hereby established a Ute Indian Tribal Juvenile Court, which may be referred to as the Tribal Juvenile Court, to handle all matters set forth in the Juvenile Code contained in this Law and Order Code.

§1-3-2. Judges.

(1) There shall be appointed:

(a) Three Appellate Court Justices for the Appellate Court;

(b) One Chief Judge and as many associate Judges as the Business Committee sees fit for the Tribal Court; and