



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MUSKOGEE AREA OFFICE

101 N. 5TH STREET

MUSKOGEE, OK 74401-6206

IN REPLY REFER TO:

Tribal Operations
Area Special Officer

DEC 06 1995

Ms. Duchess Bartmess
General Counsel
Office of the Governor
State Capitol Building
Oklahoma City, OK 73105

Dear Ms. Bartmess:

Enclosed please find a Cross-Deputization Agreement between the Bureau of Indian Affairs (BIA), the Choctaw Nation of Oklahoma, and McCurtain County, Oklahoma. We have recently been in the process of getting similar two-party agreements approved and in compliance with the Oklahoma Interlocal Cooperation Act where they have involved local entities and the BIA. As the enclosed agreement also involves the Choctaw Nation of Oklahoma, we seek to obtain approval pursuant to the authority of the Oklahoma State Tribal Relations Act, 74 O.S. § 1221, et. seq.

This agreement has been reviewed for legal sufficiency and form, and we have secured all approval signatures up to this point. We request now that the Joint Committee on State-Tribal Relations and the Governor or his named designee please review and sign this original agreement. We are furnishing a copy for your records, but request that this original agreement in its entirety be returned to this office.

After visiting with one of the Senate Staff Attorneys, this office was informed that the agreements are approved by the Governor prior to being submitted to the Joint Committee on State-Tribal Relations for approval. After this original agreement has been approved by the Joint Committee, please return it and this office will submit it to our Agency Superintendent who will take care of filing it with the appropriate County Clerk's Office before filing with the Secretary of State so that it may be in full compliance and force with the Oklahoma Interlocal Cooperation Act. We hope this arrangement will work in getting this agreement in operation as expeditiously as possible.

Once again, we are enclosing a copy of a letter addressed to you and dated July 25, 1995, in which we requested the status on four agreements that we still show as pending at the State Capitol Building. To date, we have received no response from your office. Please provide us with your answer so that we may proceed with completion of these agreements.

Thank you for your cooperation in these two matters.

Sincerely,

A handwritten signature in black ink, appearing to read "James K. Smith". The signature is fluid and cursive, with a large initial "J" and "S".

Acting Area Director

Enclosures

Tribal Operations

JUL 25 1995

Ms. Duchess Bartmess
General Counsel
Office of the Governor
State Capitol Building
Oklahoma City, OK 73105

Dear Ms. Bartmess:

We received your June 29, 1995 letter acknowledging receipt of the latest Cross-Deputization Agreement we forwarded to your office for action. We note that you forwarded the original agreement among the Bureau of Indian Affairs, the Choctaw Nation of Oklahoma, and the City of McCurtain, Oklahoma, to Kirke Kickingbird's Office for appropriate action. Mr. Kickingbird, as we understand, is the Governor's Special Counsel on Indian Affairs.

Previously such agreements have been sent to your office after they have been approved by our Solicitor's Office, the Attorney General's Office, the local entity, the Area Director, and the Chief of the Choctaw Nation. They are then forwarded to your office so that you can obtain the necessary approvals of the Governor and the Chairman of the Joint Committee on State-Tribal Relations so as to get the agreements into compliance with the Oklahoma State Tribal Relations Act. After these signatures have been secured and you have returned the agreements to us, our office plans to submit them to our Agency Superintendent who will take care of filing them with the appropriate County Clerk's Office. Afterward, filing with the Secretary of State should complete the process so that they are in full compliance and force with the Oklahoma Interlocal Cooperation Act.

At this time, we need to check on the status of the following agreements that have been forwarded to your office for action:

<u>CITY</u>	<u>SENT</u>
City of Colbert, OK, BIA, and Choctaw Nation	09-29-94
City of Antlers, OK, BIA, and Choctaw Nation	12-16-94
City of Hugo, OK, BIA, and Choctaw Nation	03-22-95
City of McCurtain, OK, BIA, and Choctaw Nation	06-20-95

The agreement for the City of Colbert, Oklahoma, was sent in the same package with agreements from Pushmataha County, and the Cities of Boswell, Krebs, and Quinton, Oklahoma. The other four

agreements were returned on January 23, 1995, but we do not show that the Colbert agreement was included when all the others were returned to us from the Secretary of State's Office.

Please locate these agreements, and let us know when we can expect to receive the approved documents from your office.

Sincerely,

Sgd. DENNIS L. WICKLIFFE

Acting Area Director



RECEIVED

Nov 16 8 58 AM '95

DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

MAIL ROOM

November 13, 1995

James E. Fields
Acting Area Director
Bureau of Indian Affairs
Muskogee Area Office
101 N. 5th St.
Muskogee, OK 74401-6206

Re: Interlocal Governmental Cooperation Agreement by and
between the Bureau of Indian Affairs, the Choctaw Nation
of Oklahoma and McCurtain County, OK ICA 95-0084

Dear Mr. Fields:

LETTER OF APPROVAL

The Attorney General has reviewed the referenced Agreement and found it to comply with the provisions of the Interlocal Cooperation Act. Pursuant to the provisions of 74 O.S. 1981, § 1004(f), the referenced Agreement is hereby officially APPROVED as of the date of the signature manifested hereon.

Please be advised that, before the Agreement may go into force, copies of the Agreement, and of this Letter of Approval, must be filed with the County Clerk and the Secretary of State.

Signed this 13th day of November, 1995.

Respectfully submitted


JOSEPH L. MCCORMICK
ASSISTANT ATTORNEY GENERAL

jm\ioa\McCurtain.APP



United States Department of the Interior

I.C.A. 95-84

BUREAU OF INDIAN AFFAIRS

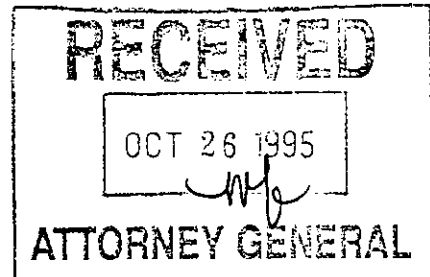
MUSKOGEE AREA OFFICE

101 N. 5TH STREET

MUSKOGEE, OK 74401-6206

IN REPLY REFER TO:

Tribal Operations
Area Special Officer



OCT 25 1995

Mr. Drew Edmondson
Attorney General of Oklahoma
2300 N. Lincoln Boulevard, Suite 112
Oklahoma City, OK 73105

Dear Mr. Edmondson:

Enclosed please find the Cross-Deputization Agreement among the Bureau of Indian Affairs (BIA), the Choctaw Nation of Oklahoma, and McCurtain County, Oklahoma. The agreement is accompanied by an August 21, 1995 letter from the Chairman of the Board of County Commissioners indicating that the agreement was signed in April of 1994 and filed on number 5-94-262. We are in the process of getting these types of agreements approved and in compliance with the Oklahoma Interlocal Cooperation Act, as well as the Oklahoma State Tribal Relations Act.

This document has been reviewed for legal sufficiency and form, and we have secured all approval signatures up to this point. We request now that your office please review and sign the original agreement before returning it to our office.

Thank you for your cooperation in this matter.

Sincerely,

Acting Area Director

Enclosures: Original cross-deputization agreement
(1) McCurtain County, Oklahoma, BIA, and Choctaw
Nation of Oklahoma

RESPONSE DUE

12-25-95

CROSS-DEPUTIZATION AGREEMENT
AMONG MCCURTAIN COUNTY, OKLAHOMA,
THE BUREAU OF INDIAN AFFAIRS, AND
THE CHOCTAW NATION OF OKLAHOMA

This Agreement is entered pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. Section 2801, et seq., the Oklahoma State Tribal Relations Act, 74 O.S. §§ 1221, et seq., and the Oklahoma Interlocal Cooperation Act, 74 O.S. Sections 1001, et seq. which provide for cooperative agreements to promote better law enforcement services.

The intent of this Agreement is to provide for the cross-deputization of law enforcement officers employed by the various agencies which are parties to this Agreement so that each agency's officers will be authorized to provide law enforcement services and make lawful arrests in Indian Country within the geographic area of McCurtain County, Oklahoma. It is the express desire and intent of all parties to this Agreement to allow law enforcement officers to react immediately to observed violations of the law and other emergency situations without regard to whether they occur on or off Indian lands.

All the parties to this Agreement recognize that when law enforcement officers arrest a criminal suspect, the officers may not know whether the suspect or the victim is an Indian or whether the arrest or the suspected crime has occurred in Indian Country, as defined by 18 U.S.C. Section 1151, and, therefore, there is

great difficulty in determining the proper jurisdiction for the filing of charges. It is further recognized that the official jurisdictional determination will be made by a prosecutor from one of the various jurisdictions, not by cross-deputized arresting officers who may deliver the arrestees to the detention facilities of the various agencies which are parties to this Agreement.

The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform Act to eliminate the uncertainties which previously resulted in the reluctance of various law enforcement agencies to provide services in Indian Country for fear of being subjected to tort and civil rights suits as a consequence of the good-faith errors of officers making arrests or quelling disturbances in Indian Country. To eliminate such concerns, the Bureau of Indian Affairs, to the maximum extent possible under applicable law, commits that if a state, local or tribal officer holding a BIA Deputy Special Officer (DSO) commission makes a good-faith arrest of an Indian and delivers the arrestee to a detention facility or to a prosecutor of the wrong jurisdiction through good-faith error, and is later sued in his personal capacity in an action, predicated upon the plaintiff's Indian descent, his arrest in Indian Country, and his delivery to the wrong jurisdiction, it will be the policy of the Bureau of Indian Affairs to provide such an officer with the same protections that would have been made available to a BIA law enforcement officer acting under like circumstances. Those protections shall

include those provided by the Federal Tort Claims Act, 28 U.S.C. Section 2401, 2671-2680, as amended.

The parties to this Agreement, therefore agree as follows:

1. Duration

This Agreement shall be in effect for a period of one year from and after its approval. It shall continue in effect from year to year, unless any party gives written notice of intent not to renew at least thirty days prior to the expiration in any given year, or unless sooner terminated by the thirty day termination period.

Any party to this Agreement may terminate this Agreement by giving thirty days written notice of termination to all other parties setting out the effective date of termination.

2. Organization

No separate legal or administrative entity is to be created hereby.

3. Purpose

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in and around Indian Country in McCurtain County, Oklahoma, and its terms should be interpreted in that spirit. Accordingly, all parties to this Agreement shall cooperate with each other to provide comprehensive and thorough law enforcement protection, including but not limited to, effecting arrests, responding to calls for assistance from all citizens and from other law enforcement officers, performing

investigations and providing other assistance such as dispatching and detention in McCurtain County, Oklahoma.

4. Financing

Activities of each of the respective parties will be financed by each of the respective parties except as expressly provided herein.

5. Termination

This Agreement may be terminated as provided in Paragraph 1, above.

6. Administration

The provisions of the Agreement shall be administered by a board comprised of the Superintendent, Talihina Agency, BIA, Talihina, Oklahoma, and the Sheriff of McCurtain County, Oklahoma, and the Chief of the Choctaw Nation of Oklahoma.

7. Property

No real or personal property is to be acquired or held under this Agreement. When personal property is loaned from one party to another it shall be returned as soon as possible upon request of the owner-party.

8. Commissions

A. Each agency who is a party to this Agreement may, in its discretion, issue special law enforcement commissions to law enforcement officers of other agencies which are parties to this Agreement upon the application for such by an agency party. Except

that the Secretary may not use the personnel of a non-Federal agency in an area of Indian Country if the Indian tribe having jurisdiction over such area of Indian Country has adopted a resolution objecting to the use of the personnel of such agency. Such commissions shall grant the officers the same law enforcement authority as that of officers of the commissioning agency unless specifically limited by the terms of the commission. When an agency issues such a commission, it shall provide notice of that commission, including the name of the officer receiving the commission, to each of the other agencies who are parties to this Agreement.

B. A commission shall not be granted unless an officer has complied with all the prerequisites for appointment as a police officer as set forth in 70 O.S. Section 3311, or 68 BIA Manual Section 9.1, et. seq., and with the specific requirements of the commissioning agency. Those prerequisites must include the following:

- (1) United States Citizenship;
- (2) A High School Diploma or Equivalent;
- (3) No Conviction For a Felony or Other Crime
Involving Moral Turpitude;
- (4) Documentation of Annual Weapons Qualifications;
- (5) A Finding that the Applicant is Free of Any
Physical, Emotional, or Mental Condition Which
Might Adversely Effect His or Her performance
as a Police Officer

C. If requested by a commissioning agency, the applicant's agency shall provide a National Crime Information Center background check on the applicant.

D. A commissioning agency may, at any time, suspend or revoke an officer's commission for reasons solely within its discretion. A commissioning agency shall notify the officer's agency in writing of the suspension or revocation and the reasons therefor. Within ten (10) days after such notification that agency shall cause the commission card and any other evidence of the commission to be returned to the commissioning agency.

9. Scope of Powers Granted

A. Officers carrying DSO commissions issued by the Bureau of Indian Affairs pursuant to this Agreement are given the power to enforce (i) all federal criminal laws applicable to Indian Country, including the Major Crimes Act, 18 U.S.C. Section 1153, and the Code of Indian Tribal Offenses in 25 CFR Part 11, where applicable, and (ii) Choctaw Nation tribal laws, where the Choctaw Nation has authorized the Secretary of the Interior to enforce such laws, and to make other arrests on Indian Land for criminal offenses where applicable.

B. Officers carrying commissions issued by a state agency, a sheriff's department, or a city police department are given the authority to enforce Oklahoma state criminal laws and city ordinances, where applicable.

C. The parties to this Agreement note that the applicability

of Federal and tribal laws in Indian Country may depend on whether the suspect or victim is Indian and that state laws have been held generally to be inapplicable to Indians in Indian Country; and the parties agree that nothing in this Agreement makes any law applicable to a certain person or certain conduct where it would not otherwise be applicable. Accordingly, the purpose of this Agreement is to provide cross-deputized officers with the authority to enforce applicable law only.

D. Nothing in this Agreement alters or conveys any judicial jurisdiction, including the authority to issue warrants for arrest or search and seizure or to issue service of process. Similarly, nothing in this Agreement is intended to impair, limit, or affect the status of any agency or the sovereignty of any government.

10. Disposition and Custody

A. Any person arrested by an Officer commissioned pursuant to this Agreement shall be turned over to a responsible official of the proper jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the officer shall ask the arrestee, where practicable, whether he or she is Indian or non-Indian and shall rely on that representation.

B. The prisoner shall be taken before a judge of the appropriate jurisdiction for initial appearance, bond setting, and probable cause hearing within forty-eight hours from the time of arrest.

C. Whenever feasible and practicable all medical and dental needs of Indian prisoners shall be provided by an Indian Health Service (IHS) facility or by tribal health care facilities. A listing of those facilities appears below. McCurtain County shall promptly notify the tribal police of such needs, to afford the opportunity to arrange for the treatment and the transport to treatment or to otherwise advise McCurtain County on action to be taken. In cases of extreme emergency where it is not feasible or practicable to seek tribal police advice in advance, McCurtain County may obtain such care for prisoners at local, federal or state facilities as emergency needs dictate. In such instances, the care provider should be advised to contact the nearest IHS facility for further instructions and for claims advice within 72 hours of the first furnishing of care or treatment. McCurtain County shall promptly notify the tribal police of actions taken when such emergency circumstances occur. If for some reason IHS refuses to pay for such emergency medical care, the Tribe will take all appropriate and lawful action so that the burden of payment will not fall upon McCurtain County.

A listing of Indian Health Service and Indian tribal health care facilities in eastern Oklahoma follows:

Carl Albert Indian Hospital	Ada	(405) 436-3980+
Chickasaw Nation Health Clinic	Ardmore	(405) 226-8181*
Chickasaw Nation Health Care Center	Tishomingo	(405) 371-2392*
Claremore Indian Hospital	Claremore	(918) 341-8430+
Sam Hider Jay Community Clinic	Jay	(918) 253-4271*
PHS Indian Health Center	Miami	(918) 542-1655
Okemah Indian Health Center	Okemah	(918) 623-0555+*
Salina Community Clinic	Salina	(918) 434-5397*

Sapulpa Health Center/ Creek Nation of Oklahoma	Sapulpa (918) 224-9310*
W.W. Hastings Indian Hospital	Tahlequah (918) 458-3100+
Eufaula Health Center/ Creek Nation of Oklahoma	Eufaula (918) 689-2457*
Cherokee Nation Health Clinic	Sallisaw (918) 775-9159*
Cherokee Nation Health Clinic	Stilwell (918) 696-6911*
Choctaw Nation Health Services Authority	Talihina (918) 567-2211+*
Choctaw Nation Health Center	Broken Bow (405) 584-2740*
Hugo Health Center	Hugo (405) 326-7561*
McAlester Health Center	McAlester (918) 423-8440*
PHS Indian Health Center	Wewoka (405) 257-6281
Lawton Indian Hospital	Lawton (405) 353-0350+

+ Open 24 hours, 7 days per week

* A tribally operated facility

IHS personnel shall be permitted to visit tribal prisoners as frequently as necessary to ensure that medical care including medication is being provided to the prisoner and that all available health services for which the prisoner is eligible are being utilized.

11. Detention, Travel and Expenses

A. If Indian prisoners are detained in the McCurtain County jail, they shall be detained in accordance with Oklahoma laws, rules, regulations and jail standards applicable to jails in the State of Oklahoma. The Sheriff or Chief of Police, pursuant to Oklahoma law, shall continue to exercise exclusive control of the operation of local jails.

B. All travel and transportation of prisoners necessary for court appearances in Federal or CFR Courts and all necessary transportation of prisoners for health care except local emergency health care, shall be performed by the tribal police.

Any necessary travel performed by McCurtain County personnel in court attendances may be reimbursed to McCurtain County by the Tribe at the rate provided by the Oklahoma State Travel Reimbursement Act (74 O.S. 500.2 et seq.) upon the filing of an appropriate claim with the Tribe. Reimbursement shall be subject to the Tribe's approval and further subject to the availability of funds for such purposes.

C. In the event it becomes necessary to provide guard security for an Indian prisoner at a health facility or any place other than the McCurtain County jail, it shall be the responsibility of the Tribe to provide such service.

D. In the event an emergency mental or psychiatric situation arises with an Indian prisoner, it shall be the responsibility of the Tribe to immediately take custody of said prisoner for appropriate action pursuant to applicable law.

E. In the event of a major crime investigation on Indian land participated in by McCurtain County personnel, all items of evidence shall be turned over to BIA officers who shall be responsible for it and for any expert tests or analyses to be performed.

12. Supervision

It is understood and agreed by the parties to this Agreement that the respective agencies, their agents, employees and insurers, have no authority nor any right whatsoever to control in any manner the day-to-day discharge of the duties of officers who have been commissioned pursuant to this Agreement.

13. Liabilities and Immunities

A. It is understood and agreed that each agency which is a party to this Agreement, its agents, employees and insurers, do not, by virtue of this Agreement, assume any responsibility or liability for the actions of officers commissioned pursuant to this Agreement which are performed outside the scope of their duties.

B. Notwithstanding Subsection A, any officer carrying a DSO performing any act within Indian Country will be afforded the protection of the Federal Tort Claims Act while acting within the scope of his employment as a Federal officer pursuant to the provisions of the Federal Tort Claims Act and pursuant to the provisions of the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804(f).

C. Nothing in this Agreement shall be read as waiving or limiting any defenses to claims of liability otherwise available to law enforcement officers, such as the defense of qualified immunity.

D. Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, not otherwise expressly waived by legislative act.

14. Additional Parties

It is understood by the parties to this Agreement that additional agencies with law enforcement responsibilities may choose to join as parties hereto but that no amendment will be made to the terms of this Agreement without the agreement of all the parties signatory to it.

15. Approval

This Agreement shall be effective when approved by the Attorney General as provided in 74 O.S. § 1004(f), when approved by the Governor and by the State Tribal Relations Committee as provided in 74 O.S. § 1221 et seq., when signed by authorized officials of the Tribe's governing body, when signed by authorized officials of McCurtain County, Oklahoma, when signed by the Area Director, Bureau of Indian Affairs and when filed of record as provided by 74 O.S. § 1001 et seq. Copies of the resolutions of the governing bodies of McCurtain County authorizing entry into this Agreement are attached to this Agreement.

16. Indian Country Identification

The Bureau of Indian Affairs or the Tribe shall prepare and furnish to McCurtain County, Oklahoma, a map and legal descriptions of all known Indian land within McCurtain County, Oklahoma.

17. Laws Applicable to Indian Country

The Bureau of Indian Affairs shall provide McCurtain County, Oklahoma, with an officer's manual containing all laws to be enforced on Indian land including tribal laws.

Approved as to proper form and compatibility with the laws of the State of Oklahoma

Assistant *Joseph J. McCurtain*
ATTORNEY GENERAL, STATE OF OKLAHOMA

11/13/95
DATE

Franklin D. Turner
GOVERNOR, STATE OF OKLAHOMA

DATE

CHAIRMAN, JOINT COMMITTEE ON STATE-TRIBAL RELATIONS, STATE OF OKLAHOMA

DATE

APPROVED:

Richard McFleck
SHERIFF, MCCURTAIN COUNTY, OKLAHOMA

4-25-94
DATE

Curly Thompson
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS, MCCURTAIN COUNTY, OKLAHOMA

5-2-94
DATE

Bill Hubbard
VICE-CHAIRMAN, BOARD OF COUNTY COMMISSIONERS, MCCURTAIN COUNTY, OKLAHOMA

5-2-94
DATE

ATTEST:

Karen S. Conaway
COUNTY CLERK, MCCURTAIN COUNTY, OKLAHOMA

5-2-94
DATE

APPROVED:

[Signature]
CHIEF, CHOCTAW NATION OF OKLAHOMA

6-2-94
DATE

APPROVED:

[Signature]
AREA DIRECTOR, MUSKOGEE AREA OFFICE, BUREAU OF INDIAN AFFAIRS

10/24/95
DATE

APPROVED AS TO PROPER FORM AND LEGAL SUFFICIENCY:

Asst. *[Signature]*
REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

9-19-95
DATE

EUGENE BURKE
DISTRICT 1
BROKEN BOW

AUBREY THOMPSON
DISTRICT 2
IDABEL

Betty
STEVEN JORDAN
DISTRICT 3
VALLIANT



RECEIVED

AUG 30 5 30 AM '95

for
8/30/95

THE BOARD OF COUNTY COMMISSIONERS

McCURTAIN COUNTY
IDABEL, OKLAHOMA 74745
(405) 286-7428

TALHUMA AGENCY


August 21, 1995

To Whom It May Concern:

RE: Cross Deputization Agreement

According to the records filed in the McCurtain County Clerk's Office, the cross-deputization agreement among McCurtain County, Oklahoma, the Bureau of Indian Affairs, and the Choctaw Nation of Oklahoma was signed on April 25, 1994. The agreement is filed on number 5-94-262. If you need any more information, just let me know.

Sincerely,


Aubrey Thompson, Chairman

AT/mc