

FILED

MAY 21 1992

OKLAHOMA SECRETARY
OF STATE

CROSS-DEPUTIZATION AGREEMENT
BETWEEN
OTTAWA COUNTY, OKLAHOMA,
AND
THE BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR

This Agreement is entered pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. Section 2801, et seq. and 74 O.S. Section 1001, et seq. which provide for cooperative agreements to promote better law enforcement services. The Business Committee(s) of the following tribes: Eastern Shawnee, Miami, Modoc, Ottawa, Peoria, Quapaw, Seneca-Cayuga, and Wyandotte have enacted Resolutions which have authorized the Bureau of Indian Affairs to enter into this agreement and to enforce tribal laws, if any, when approved.

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 jurisdiction of the BIA-Miami Agency. 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 that 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

(1) 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 is 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 sounding either in tort or in a civil rights violation, 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, and by 43 CFR Part 22.

The parties to this Agreement, therefore agree as follows:

1. DURATION

This Agreement shall be in effect for a period of one (1) 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 (30) days prior to the expiration in any given year, or unless sooner terminated by the thirty (30) day termination period.

Any party to this Agreement may terminate this Agreement by giving thirty (30) 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 Ottawa 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 Ottawa 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, Miami Agency, BIA, Miami, Oklahoma, and the Sheriff, Ottawa County, Oklahoma.

7. PROPERTY

No real or personal property is to be acquired or held under this Agreement. When personal property is loaned from one (1) party to another it shall be returned as soon as possible upon request of the owner-party.

8. COMMISSIONS

A. Each Agency which 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. 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 Qualification;
- (5) A finding that the Applicant is Free of Any Physical, Emotional, or Mental Condition Which Might Adversely Effect His/Her performance as a Police Officer.

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

D. The commissioning agency may, at any time, suspend or revoke an Officer's Commission for reasons solely within its discretion. The 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, but not limited to, the Major Crimes Act, 18 U.S.C., Section 1153, and the Code of Indian Tribal Offenses in 25 CFR, Part II, where applicable, and (ii) individual tribal laws duly enacted by the Business Committee and noted by their ordinances, where the aforementioned tribes have 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 Municipal Criminal laws 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 taken to a responsible Official of the prosecuting jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the officer shall ask the arrestee, where practicable, whether he/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 (48) hours from 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) or tribal health care facility. A listing of those facilities appears below. The Ottawa County Sheriff's Department shall promptly notify the BIA - Miami Agency Police Officers of such needs, to afford the opportunity to arrange for the treatment and the transport to treatment or to otherwise advise the Ottawa County Sheriff's Department on action to be taken. In cases of extreme emergency where it is not feasible or practicable to seek BIA Police advice in advance, the Ottawa County Sheriff's Department 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. The Ottawa County Sheriff's Department shall promptly notify the BIA-Miami Agency Police Officers of actions taken when such emergency circumstances occur.

If for some reason IHS refuses to pay for such emergency medical care, the BIA will take appropriate action so that the burden of payment will not fall upon the Ottawa County Sheriff's Department.

A listing of Indian Health Service and Indian Tribal Health Care Facilities in Eastern Oklahoma are as 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	Sapulpa	918-224-9310**
(Creek Nation of OK)		
W.W. Hastings Indian Hospital	Tablequah	918-458-3100+
Eufaula Health Center	Eufaula	918-689-2457*
(Creek Nation of OK)		
Cherokee Nation Health Clinic	Sallisaw	918-775-9159*
Cherokee Nation Health Clinic	Stilwell	918-696-6911*
Choctaw Nation Health Serv. Auth.	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, seven (7) days per week

* = A tribally operated facility.

IHS personnel shall be permitted to visit BIA 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 Ottawa 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, 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 appearance in Federal or CFR Courts and all necessary transportation of prisoners for health care except local emergency health care, shall be performed by the Bureau of Indian Affairs.

Any necessary travel performed by Ottawa County Sheriff's Department personnel in Court attendance may be reimbursed to the Ottawa County Sheriff's Department by the Bureau of Indian Affairs 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 Area Director, Muskogee Area Office, Bureau of Indian Affairs, Muskogee, Oklahoma. Reimbursement shall be subject to the Area Director's approval and further subject to the availability of funds appropriated 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 Ottawa County Jail, it shall be the responsibility of the Bureau of Indian Affairs 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 Bureau of Indian Affairs 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 the Ottawa County Sheriff's Department 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 D.S.O. issued by the BIA will be treated as a Federal employee under the Federal Tort Claims Act and under 43 CFR Part 22 in connection with any exercise of law enforcement responsibility in Indian Country.

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.

E. Should the Ottawa County Sheriff's Department or personnel be found liable in Tort or in a Civil Rights suit arising from the exercise of authority granted by a DSO Commission, the Tribe/BIA will pay the deductible amount, not to exceed \$3,000.00, under the Ottawa County Sheriff's Department liability insurance policy, subject to the availability of funds appropriated for this purpose.

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. Section 1004(f.), when signed by authorized officials of the governing body of Ottawa County and when signed by the Area Director, Muskogee Area Office, Bureau of Indian Affairs. A copy of the resolution of the governing body of Ottawa County authorizing entry into this Agreement is attached to this Agreement.

16. INDIAN COUNTRY IDENTIFICATION

The Bureau of Indian Affairs shall prepare and furnish to the Ottawa County Sheriff's Department a map and legal descriptions of all known Indian land within Miami Agency jurisdiction.

17. LAWS APPLICABLE TO INDIAN COUNTRY

The Bureau of Indian Affairs shall provide the Ottawa County Sheriff's Department with an Officers' 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:

Joseph M. Clark

ATTORNEY GENERAL

4/30/92
DATE

APPROVED AS TO LEGAL FORM:

[Signature]

DISTRICT ATTORNEY

3/4/92
DATE

APPROVED:

James F. Leek

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS,
OTTAWA COUNTY, OKLAHOMA

3-2-92
DATE

APPROVED AS TO LEGAL FORM:

Ernest M. Rice
Assistant _____
REGIONAL SOLICITOR, DEPARTMENT OF INTERIOR

2-12-92
DATE

APPROVED:

James L. [Signature]
Assistant _____
AREA DIRECTOR, MUSKOGEE AREA OFFICE,
BUREAU OF INDIAN AFFAIRS

4-15-92
DATE

RECEIVED
APR 15 11 57 AM '92

RESOLUTION 72-2

WHEREAS, Ottawa County is authorized to enter into intergovernmental cooperative agreements with federally recognized Indian Tribal Governments to address issues of mutual interest, pursuant to 74 Oklahoma Statute 1221, and;

WHEREAS, the Bureau of Indian Affairs, Miami Area Agency, has been authorized to enter intergovernmental cooperative agreements for the Eastern Shawnee, Miami, Modac, Ottawa, Peoria, Quapaw, Seneca-Cayuga and Wyandotte Tribes which are such federally recognized Indian Tribal Governments, and;

WHEREAS, a portion of the Miami Area Agency is located in Ottawa County, and;


WHEREAS, the said Indian Tribes, the United States Secretary of Interior and Ottawa County, acting by and through the Board of County Commissioners deem it to be in the best interest of all parties as well as all of the residents and citizens of the State of Oklahoma and the said Tribes to enter into an agreement to provide comprehensive police protection and law enforcement in Indian Country and to fully cooperate, each with the other to provide efficient, effective and thorough law enforcement and police protection.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Ottawa County that Ottawa County enter into a certain contract entitled "CROSS-DEPUTIZATION AGREEMENT BETWEEN OTTAWA COUNTY, OKLAHOMA, AND THE BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR" a copy of which is attached hereto and made a part hereof.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Ottawa County that the District Attorney and Chairman of the Board of County Commissioners of Ottawa County be and are hereby authorized to enter into said contract for and on behalf of Ottawa County.

Adopted and approved this 16 day of March, 1992.

ATTEST:


John Lemaster
County Clerk

BOARD OF COUNTY COMMISSIONERS


Chairman


Member


Member

AMENDED
RESOLUTION
No. 92-2

WHEREAS, Ottawa County is authorized to enter into intergovernmental cooperative agreements with federally recognized Indian Tribal Governments to address issues of mutual interest, pursuant to 74 Oklahoma Statute 1001 et seq, and;

WHEREAS, the Bureau of Indian Affairs, Miami Area Agency, has been authorized to enter intergovernmental cooperative agreements for the Eastern Shawnee, Miami, Modoc, Ottawa, Peoria, Quapaw, Seneca-Cayuga and Wyandotte Tribes which are such federally recognized Indian Tribal Governments, and;

WHEREAS, a portion of the Miami Area Agency is located in Ottawa County, and;

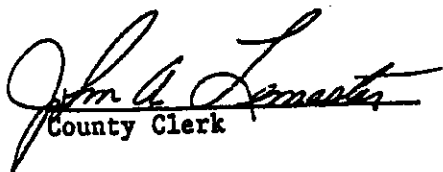
WHEREAS, the said Indian Tribes, the United States Secretary of Interior and Ottawa County, acting by and through the Board of County Commissioners deem it to be in the best interest of all parties as well as all of the residents and citizens of the State of Oklahoma and the said Tribes to enter into an agreement to provide comprehensive police protection and law enforcement in Indian Country and to fully cooperate, each with the other to provide efficient, effective and thorough law enforcement and police protection.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Ottawa County that Ottawa County enter into a certain contract entitled "CROSS-DEPUTIZATION AGREEMENT BETWEEN OTTAWA COUNTY, OKLAHOMA, AND THE BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR" a copy of which is attached hereto and made a part hereof.

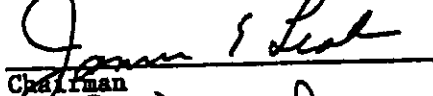
BE IT FURTHER RESOLVED by the Board of County Commissioners of Ottawa County that the District Attorney and Chairman of the Board of County Commissioners of Ottawa County be and are hereby authorized to enter into said contract for and on behalf of Ottawa County.

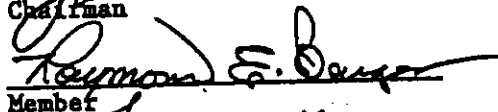
Adopted and approved this 4th day of May, 1992.

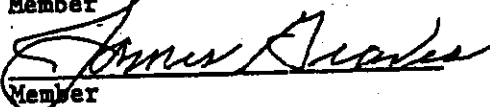
ATTEST:


County Clerk

BOARD OF COUNTY COMMISSIONERS


Chairman


Member


Member