



SUSAN B. LOVING  
ATTORNEY GENERAL OF OKLAHOMA

September 23, 1994

**FILED**

OCT 4 1994

OKLAHOMA SECRETARY  
OF STATE

United States Dept. of the Interior  
Bureau of Indian Affairs  
Muskogee Area Office  
101 N. 5th Street  
Muskogee, Oklahoma 74401-6206

Re: Cross-Deputization Agreement Among Pushmataha County, Oklahoma, the  
Bureau of Indian Affairs, and The Choctaw Nation of Oklahoma, ICA  
94-0064.

RECEIVED  
SEP 27 08 34 AM '94  
TRIBAL OPERATIONS  
MUSKOGEE AREA OFFICE

Dear Sir\Madam:

**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.1991, § 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 23<sup>rd</sup> day of September, 1994.

Respectfully submitted,

SUSAN B. LOVING  
ATTORNEY GENERAL OF OKLAHOMA

JOSEPH L. McCORMICK, IV  
ASSISTANT ATTORNEY GENERAL

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CROSS-DEPUTIZATION AGREEMENT  
AMONG PUSHMATAHA 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 Pushmataha 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 Pushmataha 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 Pushmataha 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 Pushmataha 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 or 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. Pushmataha 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 Pushmataha 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, Pushmataha 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. Pushmataha 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 Pushmataha 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 Pushmataha 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 Pushmataha County personnel in court attendances may be reimbursed to Pushmataha 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 Pushmataha 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 Pushmataha 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 Pushmataha 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 Pushmataha 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 Pushmataha County, Oklahoma, a map and legal descriptions of all known Indian land within Pushmataha County, Oklahoma.

17. Laws Applicable to Indian Country

The Bureau of Indian Affairs shall provide Pushmataha 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 McC... 9/23/94  
ATTORNEY GENERAL, STATE OF OKLAHOMA DATE

David Walton 10/4/94  
GOVERNOR, STATE OF OKLAHOMA DATE

ATTEST: J. H. Henley  
Sec. of State

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

APPROVED:

Vance Walters 5-2-94  
SHERIFF, PUSHMATAHA COUNTY, OKLAHOMA DATE

Jack Frank 5/2/94  
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS, PUSHMATAHA COUNTY, OKLAHOMA DATE

Charles Alexander 5-2-94  
VICE-CHAIRMAN, BOARD OF COUNTY COMMISSIONERS, PUSHMATAHA COUNTY, OKLAHOMA DATE

ATTEST:

W. M. Brown 5-2-94  
COUNTY CLERK, PUSHMATAHA COUNTY, OKLAHOMA DATE

APPROVED: [Signature] 5-19-94  
CHIEF, CHOCTAW NATION OF OKLAHOMA DATE

*Acting* APPROVED: [Signature] 8-12-94  
AREA DIRECTOR, MUSKOGEE AREA OFFICE, BUREAU OF INDIAN AFFAIRS DATE

APPROVED AS TO PROPER FORM AND LEGAL SUFFICIENCY:

*Asst* [Signature] 8-5-94  
REGIONAL SOLICITOR DATE  
DEPARTMENT OF THE INTERIOR

JACK FRANKS  
DISTRICT #1  
JO ANN MATTHEWS  
SECRETARY

FRANK ROSENTHAL  
DISTRICT #2  
JOHNNIE NEEDHAM  
SECRETARY

CHARLES ALEXANDER  
DISTRICT #3  
LINDA BOATRIGT  
SECRETARY

PUSHMATAHA COUNTY  
**BOARD OF COUNTY COMMISSIONERS**

203 S.W. 3rd STREET  
ANTLERS, OKLAHOMA 74523  
405-298-2512

May 6, 1994

TO: BUREAU OF INDIAN AFFAIRS

The County Commissioners of Pushmataha County do hereby agree to support cross deputization.

Jack Franks  
Jack Franks, Chairman  
Board of County Commissioners  
Pushmataha County

Witnessed before me on this 6<sup>th</sup> day of May, 1994.

Lathene J. McDonald  
Notary Public

My Commission expires: October 14, 1995