

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

March 1, 2024

Lake County Commissioners
106 4th Ave. E.
Polson, MT 59860

Sent via email to lakecommissioners@lakemt.gov

Re: Public Law 280

Dear Commissioners:

Thank you for your letter dated February 20, 2024 regarding Lake County's withdrawal from Public Law 280 (PL 280).

As originally enacted by Congress in 1953, PL 280 granted Montana and other "optional PL 280 states" the authority to assume criminal jurisdiction on reservations "at such time and **in such manner** as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof." PL 280 does not prescribe a particular format or framework; Congress deliberately granted broad discretion to the states to determine the manner of implementing PL 280 jurisdiction.

In 1961 and 1963, the Montana Legislature considered and deliberated over a process for implementing PL 280 jurisdiction. When the Legislature adopted House Bill 55 in 1963, the Legislature chose to implement PL 280 jurisdiction through the long-standing regime of placing primary enforcement responsibility on the counties. This legal regime has been in place in Montana since statehood and is common throughout the United States, including other PL 280 jurisdictions. The Montana Legislature provided no additional or separate framework, resources, or funding for the exercise of PL 280 jurisdiction outside of the existing law enforcement regime. In hearings on HB 55, sponsor Rep. Turnage of Polson testified that PL 280 would be implemented at no additional cost to the State.

Recognizing that the counties – not the State – would bear the responsibilities and associated cost of law enforcement in PL 280 reservations, the Legislature appropriately required the consent of all implicated counties before PL 280 jurisdiction could be assumed within a reservation. The Legislature also required the consent of the tribes. The October 8, 1965 proclamation establishing PL 280 jurisdiction within Flathead Reservation reflects the prior consent of Flathead, Lake, Missoula and Sanders Counties.

Consistent with this understanding, for over 50 years the counties have enforced PL 280 jurisdiction within Flathead Reservation as contemplated, without any requests for additional funding or resources from the State. Lake County strongly opposed legislation introduced in 1991 and 1993 providing for the retrocession of misdemeanor criminal jurisdiction to the

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Consolidated Salish & Kootenai Tribes (CSKT), again expressing its desire to bear the responsibility and cost of enforcement.

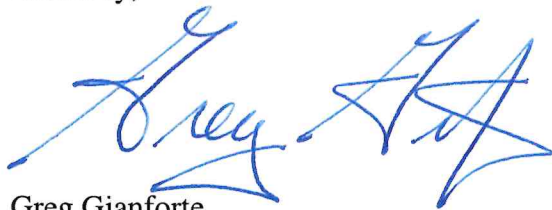
In enacting HB 656 in 2021, which allows Lake County to withdraw its consent to enforce PL 280 criminal jurisdiction, the Legislature did not provide any other framework or funding for enforcement of PL 280 jurisdiction in Lake County. The Legislature did not provide additional resources or funding to the Department of Justice, the Governor's Office, or any other state agency in the event of a withdrawal. In the absence of any legislative authorization, the current legal regime and appropriated resources are the framework within which any solutions must be derived. Neither the Governor's Office nor the Montana Department of Justice have the constitutional authority to appropriate funds or change the existing law enforcement regime.

Since receipt of Lake County's notice of withdrawal on November 20, 2023, we have determined that the ability of the State to reallocate current resources to assist with law enforcement in Lake County is very limited. The implementation of PL 280 after Lake County's withdrawal will require all stakeholders to work together to determine innovative and appropriate solutions within the existing framework and allocation of resources. Both the federal government and CSKT have concurrent jurisdiction to enforce felony crimes within Flathead Reservation. Flathead, Missoula, and Sanders Counties retain felony criminal jurisdiction. The cities of Hot Springs, Polson, Ronan, St. Ignatius are parties to the current MOU which provides protocols for cooperation between jurisdictions.

To be clear, the only potential tool available to me is to initiate retrocession of felony criminal jurisdiction to the United States.

I hope you are able to resolve your concerns in coordination with CSKT, the federal government, and the counties and cities located within the Flathead Reservation.

Sincerely,



Greg Gianforte
Governor

cc: Attorney General Knudsen