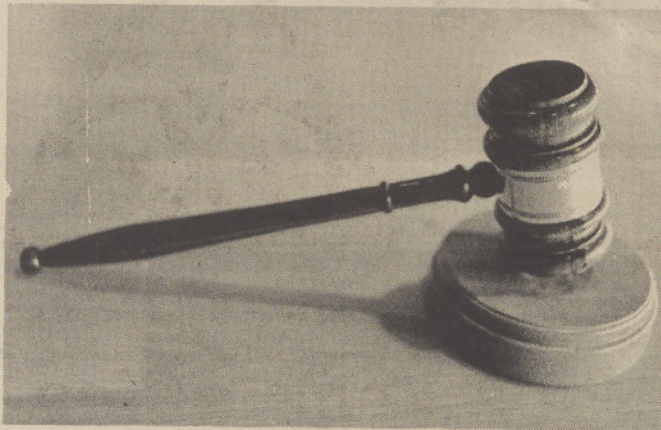


Crimes Against Public Peace and Order



by Pat Leno

This is the final review on Chapter 305, Criminal Code of the new Law and Order code for the Warm Springs Reservation. It is the longest sub-section of the code and the one with the most changes. It is entitled Crimes Against Public Peace and Order.

It deals with the rights of the public to have peace and order in their lives. It covers aiding or abetting an offender or concealing a fugitive; carrying concealed weapons; carrying weapons, when prohibited; child neglect; contempt of court; discharge of weapons; disorderly conduct; escape; failure to send children to school; failure to support a dependent; false imprisonment; gambling; liquor violations; littering; maintaining a public nuisance; narcotics; dangerous drugs, hallucinogens and delirants; perjury; refusing to aid an officer; resisting arrest; throwing a way lighted material; violation of an approved tribal ordinance; and wounds, reporting required.

In the new code, there are now nine new titles, several of which are more clearly defined. The nine new titles are bribery, failure to report; cruelty to animals; custodial interference;

false identification; initiating a false report; drug paraphernalia; obstructing justice; riot, unlawful assembly; and unlawful meetings, parades or gatherings.

Any Indian who attempts to give another money, property or anything of value with the intent to influence another in the discharge of his public duties or conduct; any Indian who accepts, solicits or attempts to solicit a bribe; or any Indian who knows or has reason to believe a bribe has been offered, made or accepted, is required to report the facts to the Tribal Police. Conviction of any part of the title carries a fine not to exceed \$500.

Cruelty to animals (305.424) deals with the acts that are deemed cruel treatment to animals. Any Indian who intentionally or recklessly mistreats, neglects or kills an animal can be charged with this section. Animals can be killed only by a person who has that legal privilege, such as a police officer or game and range officer.

A person can not interfere with the rules and wishes of a legal custodian according to 305.427, custodial interference. An Indian who has no legal right to take, entice or keep

another person from their legal guardian can be charged with section 305.427.

When an Indian is asked by a law enforcement office for identification, that person can not give or offer identification that is false. If they represent themselves to be another it will be in violation of false identification. So a person must give their correct name and not use another's or they can be charged with a criminal offense.

Earlier this year there were a number of false reports called into various agencies with reports of a bomb. Under initiating a false report this is a criminal offense. Any false reports that are transmitted to the fire department, police department or any other agency that deals with emergencies involving danger to life or property by an Indian can result with that person being charged with initiating a false report.

In recent years there has been an increased market for beaded items and often these items are used in connection with the use of narcotics. Favorite items have been pipes, bongos, roach clips and other containers used for drugs. It is now illegal to sell, transfer or offer to sell or transfer drug paraphernalia. Drug paraphernalia, 305.467, makes it illegal to have such items, they can be seized by law enforcement officers without any compensation to owners. It can be held as evidence or for other lawful purposes and then destroyed or otherwise disposed of as ordered by the Tribal Court. With the ever-increasing market of beaded drug items people who produce them need to be aware they can lose these items to the courts.

Obstructing as defined by law, means to hinder, or prevent from progress, check, stop, also to retard the progress of, make accomplishments difficult and slow. Add to the meaning justice and that is

what section 305.469 deals with. An Indian cannot interfere or cause the administration of law or other government function by means of intimidation, force, or physical interference or they can be found guilty of obstructing justice.

Riot, unlawful assembly, states that it is unlawful for any Indian to participate in a riot, a riot meaning the use of force or violence or threat to use force or violence by three or more Indian acting together without lawful authority. Anytime three or more Indians assemble with the intent or with the means and in preparation to commit an unlawful act or without lawful authority to assemble and the result will disturb the peace or excite public alarm can be charged with this section. The right to assemble is legal only when the necessary legal steps are observed. People can be charged with this section if they are asked by a policeman to disperse and they do not. If the police has reason to believe the group will resist he can command as many Indian citizens to assist him in overcoming the situation.

A permit is required for Indians to meet, parade or gather on any part of the reservation. Permits will be granted when it is felt such a meeting, parade or gathering is not being held for an unlawful purpose and it will not interfere with the use of the reservation by the general population's peace and quiet. This is to guarantee that the majority of the people's interests are taken into consideration first. Not obtaining a permit will be in violation of 305.487 of the Criminal Code.

Of major importance is the addition of section 305.424, carrying weapons, when prohibited. Any Indian who carries or possesses a firearm while under the influence of intoxicants can be charged with

this section. This will apply to people hunting. An Indian cannot carry a weapon while drinking.

Any Indian cannot carry a weapon either concealed or openly in any public building, office, store or at any public gathering unless they are duly authorized law enforcement official.

Disorderly conduct covers a range of behaviors that can be considered illegal. If an Indian causes any public inconvenience, annoyance or alarm or creates a risk through fighting or other violence, threatening behavior; makes unreasonable noise; disturbs any lawful assembly or persons; obstructs traffic on a public thoroughfare; congregates with others in public and refuses to comply with a police officer order to disperse; initiates or circulates a false report knowing it to be false; creates a condition that could cause a hazard or physically offensive condition; appears in public in an intoxicated condition; or engages in any other act of public indecency or immorality can be charged with disorderly conduct.

On the Warm Spring reservation an Indian cannot solicit or receive an order for liquor; keep or expose for sale liquor; deliver for value, peddle, keep with intent to sell, traffic in or consider, promise or obtain under any pretext liquor if they are not tribally licensed as a commercial liquor establishment. Indians cannot sell, trade or manufacture or trade any alcoholic beverages are prohibited from being consumed at any community function, at or near any place of business, Indian celebration grounds, recreational area, including ball parks and public camping grounds, the agency area and other areas where minors gather for meetings or recreation.

Fishing rights governed by newly written law

by Pat Leno

Fishing for tribal members of the Confederated Tribes of Warm Springs is a right that was guaranteed through treaty with the United States government. The U.S. government signed the 1855 treaty recognizing that the Tribe had the right to fish at all usual and accustomed fishing stations in common with U.S. citizens.

Fish is an important cultural, historical and economical asset to the tribe and its members. With this thought in mind the Tribal Council found it necessary to regulate and control all fishing conducted by tribal members. It has been through the foresight and good planning of all Warm Springs Tribal Councils that has protected and preserved the tribal properties for the benefit of past, present and future generations. It is through the Tribe's sovereign powers that the rules and regulations have been written for the good of the entire tribal membership. The Warm Springs Code,

Chapter 340, Fishing Code, was written to safeguard and protect the treaty fishing rights of the Confederated Tribes members.

With the upcoming fall season, it is important that all the membership know the rules that govern the fishing both off and on the reservation. During the summer months, Warm Springs natural resources personnel have encountered problems at the Sherars Bridge fishing site. Oliver Kirk, sergeant of the natural resources game and range enforcement branch stated, "We have encountered problems at Sherars of people not carrying their identification cards, not having their equipment marked properly, non-members fishing and people fishing while under the influence of liquor." These are clear cases of violations of the code, according to Kirk. He went on to say, "People say they didn't know these were violations."

The code clearly states that Warm Springs people must

have in their possession proper identification showing they are enrolled members of the Confederated Tribes of Warm Springs. Tribal enrollment cards can be purchased at the Vital Statistics department located at the Tribal Administration Building, Monday through Friday between the hours of 2:30 to 4:30 p.m. for \$3.00 and a duplicate for \$5.00.

All equipment used must carry the person's tribal affiliation and their enrollment number. All gill nets, set nets and hoop nets must be identified. The proper information must be placed upon or adjacent to any end cork or float of the gillnet or set net and upon the upper side of the hoop net. All set nets and gill nets cannot be longer than 300 feet in length. A person can place only one set net at one location and they can only operate five set nets at any one time.

Fishing at Sherars is the treaty right of the Warm Springs Tribe. People who are

not enrolled members of the Confederated Tribes of Warm Springs are classified as non-members and at Sherars Bridge fishing sites, they are governed by Oregon State laws. Non-members cannot fish under the treaty rights. They can be subjected to the jurisdiction of the Warm Springs Tribal Court if they violate any tribal laws, as Sherars is considered as a part of the Warm Springs Reservation. If non-member Indians are convicted, they can be fined \$150 and/or sentenced to 20 days imprisonment for a first conviction; a second conviction can be a fine of not more than \$250 and/or not more than 60 days; if a person is convicted for a third or subsequent time they can face a \$500 fine and/or up to six months imprisonment. Those same penalties hold true for members convicted under the code.

The use of controlled substances (any narcotic drug so designated by law) and intoxicating liquor is against the law while a member is

fishing under claim of treaty rights. According to Kirk, there have been cases of people violating this section of the code.

The new code, Chapter 340, replaces Ordinance No. 38 and all prior ordinances which governed fishing on and off reservation by tribal members while exercising their treaty rights.

Persons who are other than tribal members and other Indians can be charged with State of Oregon laws and are also subject to a civil penalty in Tribal Court for any civil infractions.

In an upcoming issue of Spilyay Tymoo, the Warm Springs Tribal Code Chapter 340, Fishing Code, will be reviewed.

