


REF ID: A510021315
(2 Pg. Doc.)

ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE
INTEROFFICE MEMORANDUM

DATE: May 9, 2002
TO: All Division and Section Chief Counsels
FROM: Patrick Irvine 
Solicitor General
CC: *Nevada v. Hicks*, 121 S.Ct. 2304 (2001)

In *Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304 (2001), the United States Supreme Court held that Indian tribal courts lack jurisdiction over civil actions brought against non-Indian state officials for tortious conduct occurring on a reservation while in the performance of a state law enforcement function. In *Hicks*, state game and fish officers searched a tribal member's home on the reservation for fruits of a state crime pursuant to a state warrant that had been approved by the tribal court. Language in the opinion and concurring opinions discussing the scope of state jurisdiction over tribal lands has caused concern among tribal governments that federal, state and local law enforcement agencies will read the opinion as giving state agencies broad jurisdiction to enforce state laws in Indian country. This concern is not confined to criminal cases, but could encompass civil summons, property seizure orders, orders relating to child welfare cases, and other official actions of state courts. Specifically, the Court stated:

We conclude today, in accordance with these prior statements, that tribal authority to regulate state officers in executing process related to the violation, off-reservation, of state laws is not essential to tribal self-government or internal relations – to “the right to make laws and be ruled by them.” The State’s interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe’s self-government than federal enforcement of federal law impairs state government.

121 S.Ct. at 2313. This language should not be read out of context; *Nevada v. Hicks* involved a search warrant that was approved by a tribal judge. Similarly, any service of process or other official action by state officials must be viewed in the context of tribal sovereignty and will certainly involve fact specific questions.

The need for careful analysis is shown by a recent Ninth Circuit case in which a district attorney and county sheriff were found to be liable under Section 1983 for executing a search warrant on a tribe seeking tribal employment records. *Bishop Paiute Tribe v. County of Inyo*, 275 F.3d 893 (9th Cir. 2002). The court held the county did not have

jurisdiction to execute a search warrant against tribal property. *Bishop Paiute* does not cite *Nevada v. Hicks*, although it was argued and decided after *Hicks* was issued, so it does not directly limit the broad language of the decision. Nevertheless, the Ninth Circuit decision shows that there are risks associated with acting without a full and complete analysis of the law and facts involved in a particular case.

Therefore, it is the position of this Office that *Nevada v. Hicks* should be narrowly read and does not represent an expansion of state jurisdiction. All agencies should continue to cooperate and coordinate law enforcement activities and investigations with the appropriate tribal law enforcement agency. Where other state and local law enforcement agencies seek this Office's assistance in investigating and prosecuting crimes connected to a tribal member residing on a reservation, we should advise them to operate in the same manner, coordinating law enforcement activities with the appropriate tribal law enforcement agency. While the scope of state jurisdiction in light of *Nevada v. Hicks* may require further judicial clarification, our primary concern should be to avoid situations that may create dangers for the public and law enforcement personnel.

Arizona tribal governments have been informed of this Office's position. This memo may be shared with state law enforcement agencies.

#361221