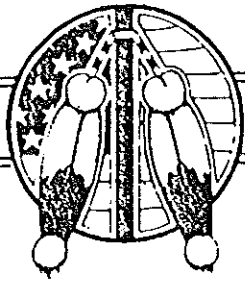


Dec 23-82



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**GLITC INC**: GREAT LAKES INTER-TRIBAL COUNCIL INC

POST OFFICE BOX 9, LAC DU FLAMBEAU, WISCONSIN 54538

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TRIBAL ALERT MEMORANDUM #45

TO: Tribal Chairpersons and Attorneys  
 FROM: Wisconsin Judicare - Indian Unit *GT*  
 DATE: December 17, 1982  
 RE: Indian Boat Registration

REC'D  
 DEC 21 1982  
 OFFICE OF  
 INDIANS OF WISCONSIN

Attached is a copy of a recent decision by the Wisconsin Court of Appeals, Wausau, concerning registration of boats owned and operated by Indians living on a reservation. In both instances the boats were operated in Lake Superior, technically off the reservation, and were not licensed at the time under the State licensing statutes.

The Court analyzes the boat registration statutes in terms of their safety purpose, their minimal infringement on treaty rights, and the operation off reservation. It also makes passing reference to operation "on the waters of the State of Wisconsin." Of particular note is the reference to language in Moe, a case in which the Confederated Tribes expressly avoided the subject of state vehicle licensing. Despite that avoidance, the federal and Supreme Court acknowledged the application of the states vehicle registration laws. The Court of Appeals has seized on this holding and language. A decision whether to appeal has not been made, but the court opinion will have an effect on car, boat, snowmobile, or other vehicle registrations on reservation.

Tribes will also note the attention given to the Red Lake license plate case if they are interested in developing their own registration system.

PRESIDENT  
 William Wildcat, Sr.  
 SECRETARY/TREASURER  
 Victoria Ackley

VICE-PRESIDENT  
 Leonard Miller  
 EXECUTIVE DIRECTOR  
 Robert Miller Jr.

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WISCONSIN  
JUDICARE

A party may file with the Supreme Court  
a petition to review an adverse decision by  
the Court of Appeals pursuant to s. 808.10  
within 30 days hereof, pursuant to Rule  
809.62 (1).

NOTICE

This opinion is subject to further  
editing. If published the official  
version will appear in the bound  
volume of The Official Reports.

No. 81-2203

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL WHITEBIRD  
and ROBERT LEMIEUX,

Defendants-Appellants.

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APPEAL from judgments of the circuit court for Ashland  
county: WILLIAM E. CHASE, Judge. Affirmed.

Before Foley, P.J., Dean and Cane, JJ.

FOLEY, P.J. Michael Whitebird and Robert Lemieux,  
enrolled members of the Bad River Band of Lake Superior  
Chippewa, appeal judgments convicting them of operating boats on  
Lake Superior without valid certificates of number in violation  
of sec. 30.51(1), Stats.<sup>1</sup> They claim that Wisconsin cannot  
enforce sec. 30.51(1) against them because it lacks the required  
federal authority and because enforcement would be an  
unwarranted interference with their treaty fishing rights. We

reject these arguments and conclude that Wisconsin may enforce sec. 30.51(1) on Lake Superior against enrolled members of an Indian band.

The numbering requirement of sec. 30.51(1) is nondiscriminatory. Cf. Moe v. Confederated Salish and Kootena Tribes, 425 U.S. 463, 469 n. 9 (1976) (where a vehicle registration fee is termed nondiscriminatory). A nondiscriminatory state law applies to tribe members outside their reservation<sup>2</sup> unless there is express federal law to the contrary. See Webster v. Wisconsin Department of Revenue, 102 Wis.2d 332, 337, 306 N.W.2d 701, 705 (Ct. App. 1981). We have found no express federal law prohibiting the application of sec. 30.51(1) to members of the Bad River Band outside their reservation, and Whitebird and Lemieux have cited none.<sup>3</sup>

The fact that Wisconsin could not impose a personal property tax on Whitebird's and Lemieux's boats<sup>4</sup> does not prohibit Wisconsin from enforcing sec. 30.51(1). The fee that ~~Whitebird and Lemieux must pay to obtain a certificate of number~~ is not a tax. See State v. Jackman, 60 Wis.2d 700, 707, 211 N.W.2d 480, 485 (1973). We also see no distinction between the fee required for a motor vehicle license and the fee required for a boat certificate of number.<sup>5</sup>

The Treaty of September 30, 1854, 10 Stat. 1109, also does not prohibit Wisconsin's enforcement of sec. 30.51(1) against Whitebird and Lemieux as an infringement on their nonexclusive fishing rights in Lake Superior. See State v. Gurnoe, 53 Wis.2d 390, 410, 192 N.W.2d 892, 902 (1972). The purpose of sec. 30.51(1) is to promote boater safety. Jackman, 60 Wis.2d at 705, 211 N.W.2d at 484. Section 30.51(1) does not purport to regulate fishing rights, and it does not infringe on Whitebird's and Lemieux's rights to fish where, when, and with what they want.

Even if we agreed that sec. 30.51(1) arguably had some minimal effect on fishing rights, such an effect would not preclude Wisconsin's enforcement of sec. 30.51(1) because it serves a public safety function. See Gurnoe, 53 Wis.2d at 410-11, 192 N.W.2d at 902; see also State v. Lemieux, 106 Wis.2d 484, 487, 317 N.W.2d 166, 168 (Ct. App. 1982) (review granted). The public safety purpose of the statute cannot be accomplished unless the statute can be enforced. Enforcement would be practically impossible if some boats did not have to be numbered.<sup>6</sup> Even if Whitebird and Lemieux were entitled to a hearing, see State v. Peterson, 98 Wis.2d 487, 490, 297 N.W.2d 52, 53 (Ct. App. 1980), the necessity of Wisconsin's enforcement of sec. 30.51(1) against Whitebird and Lemieux is so patently

apparent that no purpose would be served by this court's remand of these cases for a determination of this issue.

By the Court.--Judgments affirmed.

Recommended for publication in the official reports.

## A P P E N D I X

1 Section 30.51(1), Stats., provides:

Certificate of Number Required. No person may operate, and no owner may give permission for the operation of, any boat on the waters of this state unless the boat is covered by a valid certificate of number issued under this chapter or is exempt from the numbering requirements of this chapter.

2 Section 30.51(1), Stats., requires a certificate of number only when the boats are operated on Wisconsin waters.

3 The Bad River Band does not have its own boat numbering ordinance. Cf. Red Lake Band v. State, 248 N.W.2d 722, 727 (Minn. 1976) (holding that the Red Lake Band of Chippewa was entitled to an exemption from Minnesota's motor vehicle registration statute where the Band had adopted its own registration ordinance).

4 See Washington v. Confederated Tribes, 447 U.S. 134, 163-64 (1980), holding that a state could not impose a personal property tax on vehicles owned by Indians living on the reservation.

5 In Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 469 (1976), the United States Supreme Court noted that both the district court and the Tribe recognized that the state could exact a fee for registration and issuance of state license plates for a motor vehicle.

6 Like a boat, which may be used for fishing, a motor vehicle may apparently be used for hunting. State v. Lemieux, 106 Wis.2d 484, 487, 317 N.W.2d 166, 168 (Ct. App. 1982) (review granted). We see no distinction between the state's need to require vehicle licensing and its need to require boat numbering, even though the licensing may indirectly have some minimal effect on Indian hunting and fishing rights.