

"Indian Country" hard to define at IRA meeting

By Bill Hess

Tundra Times

Editor's note. One of the hottest topics raging in this state and one which promises to have far-reaching impacts for the whole of Alaska is the debate on the powers and authorities of the village Indian Reorganization Act and traditional governments. Some factions opposed to the IRA governments have maintained that the Alaska Native Claims Settlement Act of 1971 virtually terminated IRA powers as it set up a non-reservation, state chartered corporate system for most of Alaska. ANCSA, however, does not address the subject of IRA and traditional governments. Most people knowledgeable on the subject now agree that the inherent sovereign powers held by Native governments prior to ANCSA are still held by them; they have not been terminated. The question which causes great debate now centers more over what land, as most Alaska tribes do not have reservations, do they exercise their jurisdiction. In the last issue of Tundra Times, Don Wright, who presented a major voice for Alaska Natives during the drive which led to ANCSA, urged Alaska Natives to throw off what he called the "shackles" of state chartered corporations, and instead to turn their

corporate lands over to their village IRA and traditional governments, and in turn to charter them under the federally protected powers of sovereign tribal governments. Other speakers who had addressed the same meeting at which Wright made his statements had argued that there were no easy answers. In this, the third of a four part series based on that meeting sponsored by the Alaska Federation of Natives, another viewpoint is looked at. Out of that meeting, a group separate of AFN was begun to represent IRA and traditional governments on a statewide basis.

Tribal governments in Alaska Native villages do hold the same sovereign powers of self government which they had before 1971, different speakers at the IRA convention in Anchorage agreed. The question was: over what territory do they exercise their jurisdiction?

On reservations in the Lower 48, the question is relatively simple, although many disputes still exist. Step over the reservation boundary into Indian country and you are within the jurisdiction of an Indian tribe; you are in Indian country. Step back over, and you are subject to the jurisdiction of the state, county or city which exists there.

What constitutes "Indian Country" — in legal terms — in Alaska? Do lands held by Native village and regional corporations? Tribal governments have a specially recognized trust relationship to the federal government; they are not subject to state laws the same way a city or borough is, and are empowered to deal with the state, federal and other entities in a government-to-government relationship.

The corporations formed under ANCSA, on the other hand, are chartered under the state of Alaska, which often refuses to even recognize the tribal governments. How do the two, federally protected tribal governments and state chartered corporations, blend together?

It is a subject on which there was a great deal of argument. Many participants who took the floor denounced the direction ANCSA has taken, saying that the turning over of Native lands to state-chartered corporations was an unconstitutional violation of their rights. Charles Edwardsen, Jr., argued that all land north of the line formed by the Porcupine, Yukon and Kuskokwim River is Indian country under the provisions by which Alaska became a state and is subject to Indian law.

Any laws trying to circum-

vent this, said Edwardsen, violate fifth amendment protections against the taking of life, limb or property without due process of law. Others argued that they had never voted to accept the provisions of the Act. Woodrow Morrison of Southeast said it was the old government routine of two parties negotiating away a third party's rights without his consultation; still others argued that the Natives of Alaska had never surrendered any jurisdiction to the Russians, and the Russians had not in turn surrendered any of their rights to the United States when the territory was sold in 1867.

David Case, an attorney who now teaches at the University of Alaska in Fairbanks, suggested that perhaps IRA governments and the ANCSA formed corporations could live together. He noted the strong economic and political forces generated for Alaska Natives since the Claims Act.

As to Indian country, Case noted that while Indian reservations and Native Allotments are what many now recognize as official Indian Country, the meaning of the term has been changing constantly since the earliest contact between European colonists and Native Americans. While this is often confusing, Case suggested Alaska Natives may be able

to make this work for them as a definition for Indian country is worked out in this state.

Case noted the difference between governments and corporations: one which has sometimes been confused in Alaska since 1971 as shareholders have looked expectantly toward their corporations, expecting governmental-type services. While a government can conduct business, Case pointed out that a corporation cannot govern; it cannot levy taxes, establish courts, make laws, or enforce Indian child welfare regulations.

For those who seek to turn village corporate lands over to their tribal governments and then hope to have them declared inalienable and subject to federal protection as are reservations, Case pointed out the situation of the Pueblo Indians in the Southwest United States.

"The Pueblo live in small village communities," said Case, "... they don't appear to be tribes in the sense that white people normally define tribes." They don't have a reservation, but they do have tribal governments and land which is held in trust for

When the United States conquered Mexico, the treaty agreement reached with that nation guaranteed that the U.S. (Continued on Page Eight)

Government action brings recognition

(Continued from Page Five)

would honor the land holdings of the Pueblo people as agreed to between the Pueblos and Mexico. The Pueblos entered the U.S. with "fee simple" land, meaning they could sell it, and that it would also be susceptible to taxation.

Eventually, the Pueblos requested the Secretary of the Interior to put that land in trust status, which he did, and the tribe now exercises its authority over it.

To those who would argue that Congress intended with ANCSA that no more land in Alaska be put in trust, Case pointed out a recent case involving the Chilkat of Klukwan. Prior to the claims act, they held a small reservation of 800 acres. This was thought to be rich in iron ore, and was subsequently turned over to the village corporation which was expected to exploit it.

The deposits did not prove to be so wealthy as expected. The corporation requested Congress to let it select land elsewhere, and to turn this 800 acres back over to the tribal government. Congress did so.

"So Congress was not absolutely foreclosing Native governments (with ANCSA)," Case explained.

He also argued that the same village, Klukwan, had presented a good case for governments seeking to establish their own courts to deal with property. A woman of the village who had moved Outside decided that some valuable totems were hers and returned to the village to collect them and sell them Outside. The tribe stopped the sale, ruling that under Tlingit law the

totems were community property.

The woman took the case to court, but a state judge ruled that he was not qualified to make a judgment under Tlingit law, and submitted to the tribal judgment.

The best thing governments wishing to be recognized can do, Case said, is to act like governments. He pointed to the Sitka IRA government

which set up a court that has been dealing with cases under the Indian Child Welfare Act. Decisions of that court regarding children who had been taken away for adoption Outside have been honored.

They may yet be challenged, Case noted, but stressed that the IRA was acting like a government, and was in turn being treated like a government.



Charles Edwardsen, Jr., (Etuk) takes the floor at the IRA convention.

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