Public Law 280 and the American Native

By Alex Scala

Public Law 280 was signed into law on August 15, 1953. Ironically enough, House Concurrent Resolution 108 was passed exactly 14 days earlier. The mentality behind the two is not noticeably different.

House Concurrent Resolution 108 states that Congress wishes "as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and grant them all the rights and prerogatives pertaining to American citizenship"; in other words, it was the intent of Congress to curtail the special guardianship relationship between the federal government and the American Indian Nations.

Public Law 280 essentially granted civil and criminal jurisdiction over "Indian Country" to several states. The act was amended in 1958 to include a number of other States and Territories, including Alaska.

Both expressions were the result of an assimilationist mentality that was prevalent in the Congress at the time. The feeling was that the Indian Nations and the American democratic way of life would be better off if the government's Trust Responsibility to protect the interest of Native Americans was terminated.

Yet there are other provisions of Public Law 280 which protect Native trust and restricted property from "encumbrance, alienation or taxation of any real property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States."

Another provision of the act states that "any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action."

Although these provisions prevent the state from adjudicating or regulating Native interests somewhat, their full ramifications are not entirely known.

But some Alaskan Natives feel the federal pre-emption doctrine needs to be brought into play in matters concerning P.L.280 jurisdiction of the

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P.L. 280 needs definition and limits

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State of Alaska and the federal statutes protecting the interests of Alaska Natives.

They feel that the federal laws protecting the Native right to enact tribal ordinances and customs need to be protected and should preclude any state ordinance or law that is in conflict with tribal traditions.

A good case in point is the Tanana Village Council's efforts to protect the right of tribal members to take game for Nuchalawaya over and above any state Fish and Game laws restricting this cultural exercise.

Charlie Edwardsen stated a few months ago in a question posed to a BIA official, "Under federal law tribal lands are not to be alienated . . . . and the powers of the Tribe as they are defined to Alaska come under 476 (Section 476 of the IRA), and as a 476 Tribe each cuncil has a veto against alienation of tribal property and here the federal bureurocrat who is delegated to review tribal functions, is in conflict with the law, not in the interpretation of our rights, and when this instance the federal official is now taking our property without our consent and giving it to somebody else, we feel that the tribal authority that is on the core township today and the Native Townsite Act of 1926 as it applies Statewide is a valid existing right to all of those villages, ... so where does federal pre-emption stop and state take-over begin?"

So although P.L.280 gives the state jurisdiction over certain areas of Native affairs, there are limits. These limits need to be defined while there is still time.