

Native legislation focuses on government, eligibility

by John W. Katz

Special counsel to the governor

WASHINGTON, D.C. — For many years, the discussion of Native affairs focused primarily on the enactment and implementation of legislation to settle aboriginal land claims.

Other issues existed, but they were largely sublimated to this overriding purpose.

Today, Native related matters pending in Washington, D.C., span a wide spectrum, ranging from assertions of governmental power to eligibility for benefits under various federal programs.

Several Native villages, including Circle, Nenana and Stevens, are in the process of petitioning the secretary of the Interior for recognition under the Indian Reorganization Act.

This legislation accords status to Native entities under federal law and provides for a measure of self government.

Within 30 days of a village's election, the secretary must approve a proposed constitution unless he finds that its provisions are contrary to federal law.

Important issues raised by some of the constitutions include the nature and scope of governmental powers and the categories of lands and persons over which this authority is asserted.

A bill is pending before the Senate Select Committee on Indian Affairs to establish a process for recognizing tribal status under federal law.

The principal purpose of this legislation is to address the Interior secretary's long delays in approving petitions submitted by Indian entities located in the Lower 48 states.

OPINION

However, the bill will probably apply to Alaska as well.

Hearings have been held, but no further committee action is scheduled at this time.

In approving subsistence fishing on the Kenai Peninsula, the 9th Circuit Court of Appeals invalidated the state's definition of "rural," which was utilized to determine subsistence eligibility on an area by area basis.

The U.S. District Court for Alaska authorized the Kenaitze Indians located on the Kenai to engage in an "educational fishery" this past summer. Efforts have been started to develop a long-term solution to the issue of subsistence eligibility.

Legislation has been introduced in the House and Senate to establish a federal-state-Native commission to study a variety of health, education and social problems affecting the Native community and rural Alaska.

The Senate Indian Affairs Committee is scheduled to consider this measure this month.

Several Native villages are expected to request the secretary of the Interior to approve ordinances authorizing the villages to control the sale and distribution of liquor under federal law.

The key issue here could be the geographic extent of regulatory jurisdiction claimed by some villages.

The Indian Health Service had proposed regulations based on tribal

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membership which would deny health services to more than 3,000 Alaska Natives.

The Congress is expected to impose a moratorium on the implementation of these regulations, thereby giving interested parties the opportunity to study the budgetary and other implications.

The federal Department of Health and Human Services has proposed regulation under the Aid to Families with Dependant Children program which would allow the agency to determine eligibility by considering as assets any Alaska Native Claims Settlement Act dividends over \$2,000 received by a Native shareholder during his or her lifetime.

The state and others have strongly objected to this regulation on the grounds that it contravenes a provision of ANCSA which provides that federal agencies should not consider the first \$2,000 in corporate dividends received in a given year, rather than cumulatively over a lifetime.

If the proposed regulation is ultimately made effective, this approach could have far reaching implications for eligibility determinations under other programs.

Last year, the Senate Select Committee on Indian Affairs held extensive hearings on the Indian Child Welfare Act, which establishes rules and procedures for the adoption of Indian children. The act defines the respective roles of tribes, states and natural and adoptive parents.

No firm consensus emerged at the hearings, and it is not clear whether further legislative action will occur during the current Congress.

For several years, Alaska Natives have been excluded from the Bureau of Indian Affairs' General Assistance Program, which helps fill gaps in the welfare regimes of the various states.

Congress is now moving to eliminate this prohibition. However, it is not yet clear whether and how the General Assistance Program will operate in Alaska.

My one entreaty is that interested persons take the time necessary to understand all relevant considerations before assuming adamant positions on these matters.

In the past, the federal government utilized the Native townsite program, now repealed, to convey lands to individuals and communities.

The Bureau of Land Management, the state and Native representatives have been discussing the best means for transferring the remaining townsite parcels to eligible recipients.

The issues discussed here are often complex and controversial.

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