

# Sparks fly at IRA meeting in Anchorage

By Bill Hess  
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*Editor's note: Two weeks ago, villagers from every corner of Alaska gathered in Anchorage for what proved to be an often-heated conference on tribal governments formed under the Indian Reorganization Act of 1934. That act set up guidelines for tribal governments to "reorganize" themselves to deal with the federal government in a convenient way enabling them to receive revolving loans and to incorporate. It was not necessary to do so, as the United States recognized the inherent sovereignty of Indian tribes. The Navajo Tribe, for example, is a traditional rather than an IRA government, yet it occupies the largest reservation in the United States and still maintains a special trust relationship with the federal government. Since the passage of the Alaska Native Claims Settlement Act, there has been a great deal of dispute as to what authority IRA and traditional governments have in Alaska. This is the second in a four-part series which will take a look at some of the different issues and viewpoints which arose during the conference, which was sponsored by the Alaska Federation of Natives.*

Tribal governments in Alaska which wish to preserve their rights of sovereign self-government should exercise them before it is too late. If they believe it is their right and in their best interests to establish tribal courts, police departments, to levy taxes, charter corporations or carry out any other activities commonly undertaken by governments, then they should do so.

This was the message Bert Hirsch, an attorney who has represented different Outside tribes, delivered to participants from villages throughout Alaska who gathered in Anchorage recently for a special conference on Indian Reorganization Act (IRA) governments.

Before the conference ended, participants laid the foundation for a new state wide organization to represent tribal governments in Alaska.

There has been a great deal of dispute over what powers and authority have been left to the tribes since the passage of the Alaska Native Lands Claim Act in 1971. Opponents of tribal government argue that the law virtually stripped Alaska Native governments of the powers enjoyed by governments on reservations in the Lower 48, where many tribes levy their own taxes, manage their own fish and game, conduct their own business and run their own law enforcement and judicial systems.

"Nonsense!" said Hirsch. "Do it!" Hirsch noted that although the courts have repeatedly ruled that the failure of a sovereign to exercise its authority does not mean it loses that inherent power, as a practical matter, the power can be lost.

He cited Public Law 280,



Victor Haldane of Hydaburg participates in the IRA Conference.

PHOTO BY BILL HESS

which gives certain states the authority to exercise law enforcement and other stated jurisdictions in Indian country within their boundaries. This was done, said Hirsch, during a time in which there was a breakdown in law and order in Indian country.

Alaska is one of the states which has been given P.L. 280 authorities, although there was a great deal of argument during the conference as to just what this really means. One thing is clear, Hirsch emphasized. There are some very influential and formidable people in government and industry "who are hell-bent on terminating Alaska Natives!"

They would end the special government to government relationship between Native villages and the United States, said Hirsch, as they stand to reap great profits from oil, mineral and other exploration by doing so.

Once the village governments had taken actions exercising their sovereignty, then, said Hirsch, any parties disagreeing with them could react and challenge them in court or do whatever they felt necessary to make their arguments. This would be better than having the village governments always being the ones to react to other people's actions, or to sit around waiting for someone's legal opinion on what rights they do or do not have.

Several presenters at the conference agreed with Hirsch that ANCSA does not terminate the authority of IRA and traditional village governments. Nowhere does the act address such powers. Therefore, it stands to reason that the powers were never taken away,

they argued.

Problems arise in determining over what territory a government can exercise its domain. As one presenter pointed out, tribal governments on reservations have a definite land base on which to exercise their jurisdiction. Cross the reservation boundary, and you are in Indian country, and subject to Indian law. Step back out, and you are in state territory.

What ANCSA did in Alaska was to take the equivalent of the lands held in trust in reservations by the federal government for the tribes, and place these lands instead in State of Alaska chartered village and regional corporations. This has resulted in a great deal of confusion and turmoil between tribal governments and those they deal with.

Although Alaska does business with the tribes, the state does not formally recognize them. The tribes, in turn, have a trust relationship with the federal government wherein Uncle Sam is committed to protect their interests.

Don Wright, who has worked with the Venetie IRA government as it has set up its own boundaries and lands, told those gathered that the answer is to take those state chartered lands and make them tribally chartered lands. Wright, who was president of the Alaska Federation of Natives and chief negotiator with the government during the days that ANCSA was being worked out, claimed that Congress never intended to wipe out village sovereignty.

"It was the intent of Congress . . . and our intent . . . regardless of the form of

local government . . . if it was a traditional village or an IRA, they would get it (the land), and therein lies your initial land base!"

The village of Venetie took all of its fee simple lands and turned them over to the village government. Since that time, the council has exercised its authority in a number of ways. When a state game officer confiscated caribou from villagers last spring, the village confiscated his airplane. Recently, Venetie announced its own oil-lease sale.

Wright also noted that the village had successfully resisted all state easements for campgrounds and trails on its land, and had laid claim to half the rivers bordering its territory.

Further, Wright added, Venetie holds 1,800,000 acres of land and has a Native population just over 300. On a per-capita basis, Wright said, that leaves Venetie in control of as much of Alaska as it would have been if the total acreage of the state had been divided equally among all Alaska Natives. "And not one easement!" he boasted.

Wright said that by turning the land over to the village council, the federal government was obligated to protect it in trust just as it must for reservations in the Lower 48. Even after 1991, when lands held by the state-chartered corporation become subject to purchase by non-Natives and to taxation, the lands of Venetie will be protected, said Wright.

Other presenters, including Lawrence Jensen, the Associate Solicitor with the Division of Indian Affairs out of Washington, D.C. had earlier argued

that the case of Venetie might not be so secure as some wanted to believe, and would have to be tested in court.

Wright held fast to his argument that the land was in trust forever. Lawyers could disagree, he said, but if the U.S. ever attempted to remove the land, "we could get it to a world forum."

Noting that a corporation does not have to be chartered by Alaska to do business in Alaska, Wright urged the villagers to "cast off the shackles" of the state and charter themselves instead under their IRA or traditional governments.

"No kind of corporation exists that has more flexibility than a federally chartered, Section 17 chartered corporation." Such a corporation is authorized by Congress, Wright said, and is free from many taxes incurred by state chartered corporations.

Section 17 is the portion of IRA which authorizes tribal governments to incorporate.

Jensen, who often received a less than enthusiastic reception from the audience, had argued that it might not be as easy as some hoped to turn corporate lands over to tribal governments. For one thing, he said, there was no guarantee the Secretary of the Interior would accept such lands in trust.

Further, any stockholders who did not want to turn their shares over to the village would have to be bought out before it could happen. If a major corporation began competing with the village for the shares, the village could find itself in need of a great deal of cash to win out, it was argued.