

Village and Region: A time for mediation?

Should revenues paid to regional Native corporations for net operating losses (NOLs) be shared with other Native corporations under the Alaska Native Claims Settlement Act?

Some village corporations say yes, some regional corporations say no, a lot of village and several regional corporations have not taken a position. The truth is, no one can say for sure without judicial interpretation.

Certainly Alaska's Congressional delegation is entitled to its own opinion on the question of whether NOL revenues are to be shared, especially when it comes to interpreting the original intent of Congress at the time ANCSA was passed. However, by trying to prevent judicial review of the issue, and by stifling any debate in Congress, the delegation has broken faith with many village corporations whose assertion deserves a fair hearing.

There has long been an unwritten understanding that technical amendments to ANCSA can be advanced as a package provided they are non-controversial, that proposals to amend the bill not meeting this test are dealt with separately. We feel that with a \$525 million lawsuit pending, the NOL language fails this test. As such, if it was to be dealt with in a legislative forum at all, it should have been separated from the amendments and given the benefit of a hearing and debate on its merits.

It is important to realize that no matter how difficult village corporation financial circumstances may be, that fact alone does not entitle them to carry the day in court or Congress. And while it has been suggested at various times that ANCSA was "designed to fail," we do not credit the theory that regional and village corporations were intended to fiscally drain one another, thus robbing shareholders of their birthright.

Given Congressional approval of language blocking the distribution of NOL revenues under Section 7(i) of ANCSA, and the announcement by village corporations that they have appealed dismissal of their case by a U.S. District Court judge, and are considering formation of a political coalition to address this issue and others like it, it is hard to predict where this issue will go next. However, if village corporations prevail in their appeal, we are in for at least a long judicial process.

In the interests of Native unity, in the interests protecting both village and regional assets from the effects of prolonged litigation, perhaps the time has never been more ripe for the parties involved to enter voluntary arbitration.