

Sheffield questions ordinance for Minto

by **G.D. Renkes**
for the Tundra Times

Gov. Bill Sheffield is questioning recent action by the U.S. Department of Interior in approving the new Village of Minto Liquor Ordinance, claiming

Interior's action appears to declare Minto to be "Indian Country."

The ordinance was adopted under the authority of the federal Indian liquor laws.

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In a Sept. 25 letter to Interior Secretary Donald Hodel, Sheffield said the ordinance, certified and published by Interior in the Aug. 11 Federal Register, "appears to be a significant change of position."

Sheffield said the Interior action "declares Minto to be Indian country and even goes so far as to extend that label to all lands selected by Minto's ANCSA village corporation."

"To our knowledge," the governor states, "the secretary has never stated that Indian country exists in Alaska, except for reservations and allotments. In our opinion, there is no legal basis for such a position."

The letter also states that because of the implications such a "dramatic reversal of opinion could have on regulatory jurisdiction within Alaska," the secretary's answers are needed to several questions, including:

- Does Interior believe that ANCSA corporation lands are Indian country?
- Does Interior conclude that an off-reservation Native council such as the Minto village council has authority to impose regulatory controls on non-members or to preempt state regulatory controls?
- Did Interior find specifically that state law is inadequate to address the situation in Minto?

Sheffield said the new state local option law "provides even greater protections against liquor violations than the ordinance which your department published."

The Minto Liquor Ordinance provides for a complete prohibition over

the possession, use and distribution of alcohol within the Indian country under the jurisdictions of the Native Village of Minto.

The Minto village boundaries are defined in the ordinance to include "all lands within the exterior boundary of lands selected under the Alaska Native Claims Settlement Act by Minto Village."

Minto enacted a state local option law in 1983 banning the importation of alcohol into the village. The BIA notice of the new Minto ordinance states: "The village has found the local option to be a failure because state laws do not adequately address violations, therefore, the village is taking steps to control alcohol through its tribal system."

Under the ordinance, bans on the importation, sale, possession and consumption of alcohol within the village boundaries will be enforced by the Minto Village Court System as a civil matter and by requesting federal enforcement of the tribal court orders.

Minto is not the first village to exercise its authority under the federal Indian liquor laws and regulate alcohol with tribal laws rather than relying on state law. Similar ordinances were approved and published by the BIA for the villages of Chalkyitsik and Northway in 1983.

Federal law has penalized the introduction of liquor into Indian country since at least 1834. These laws were specifically extended to Alaska in 1873.

In 1953, Congress delegated the authority to regulate alcohol in Indian country to the tribes. And since 1968,

Interior has considered these laws to be applicable to reservations and "dependent Indian communities" in Alaska.

Under the federal Indian liquor laws, the introduction of liquor into Indian country is a crime punishable under federal law by a fine of \$500 and a maximum term of imprisonment of one year or both, for the first offense, and a fine of \$2,000 and a maximum five-year term of imprisonment or both for subsequent offenses. In addition, possession of liquor is also a federal crime.

Federal law already outlaws the conduct covered by the state local option law or the Minto Village Liquor Ordinance in Indian country. However, there has been very little to no federal enforcement of these laws in Alaska.

The congressional delegation of authority to the tribes exempts federal application of the liquor laws to Indian country so long as an act or transaction otherwise prohibited by the federal law "is in conformity both with the laws of the state... and with an ordinance duly adopted by the tribe having

jurisdiction over such area of Indian country."

In order to be effective, the tribal ordinance must be certified by the Interior secretary and published in the Federal Register.

Under federal law, villages can prohibit alcohol with their own tribal laws. Criminal penalties cannot be imposed on non-Native offenders by tribes, but civil penalties can be.

By exercising their tribal authority to regulate alcohol, villages may gain some practical advantages. Most villages do not have the easy access to state police and judicial authorities necessary for the effective prosecution of state local option law violations.

Villages do not have to depend on these officials for the administration of their own tribal ordinances.

Moreover, tribal liquor ordinances enacted under federal law do not replace state law in Indian country. Both the state and the tribe can regulate liquor in Indian country with the more restrictive law applying and enforceable by either the state or tribal authority.