

FINALLY, Tribal Status

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In a closely watched case on the extent of tribal powers in Alaska a federal judge has ruled that Tyonek is a federally recognized tribe that can set and enforce its own laws.

U.S. District Judge Russell Holland's decision in the 14-year-old case was hailed by tribal advocates as a boost for their position in the long-debated issue of tribal sovereignty.

"This is a victory for all tribes in Alaska," said Kari Bazzy Garber, the attorney representing the village. "It means tribal status is now a non-issue."

The ruling, in effect, grants tribal status to roughly 200 Alaska tribes that are on a list of Native tribes nationwide recognized by the Bureau of Indian Affairs, Baize Garber said. It means each tribe doesn't have to go through a lengthy court proceeding to get tribal status.

Before Holland's Tuesday decision, it appeared that every time there was a

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Finally, tribal status - Tyonek wins 14-year battle

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question of whether a tribe had a legal standing, the issue would have to be resolved with a trial, Bazy Garber said.

It also moves those tribes a step closer to obtaining "Indian country" status for their lands, Bazy Garber said. That status governs reservation land in the Lower 48 and allows tribes the autonomy to run casinos, for example.

"We don't have to wonder if these are tribes anymore," Bazy Garber said. "Everyone has wondered because Alaska became a state later, and because of the Alaska Native Claims Settlement Act. This totally clarifies it."

Attorney Randy Simpson, who represented the defendants, said he had seen the ruling but did not want to comment until he had an opportunity to talk to his clients.

In the early 1990s, under Gov. Wally Hickel's administration, the state opposed sovereignty for Native villages, arguing it could erode the state's authority

in rural Alaska. The state did not take a position in the most recent consideration of the issue.

The Tyonek case grew out of a 1982 lawsuit filed by the village of about 250 Athabaskans to evict two white couples.

After the village sued to evict them, the renters and their landlords filed separate civil rights lawsuits, claiming the village ordinance authorizing eviction amounted to racial discrimination.

Donald and Derna Puckett and Fred and Virginia Slawson were living in houses built in the 1960s on village lands. Until the passage of the ANCSA in 1971, those lands were part of a Tyonek reservation on the West side of Cook Inlet.

The ordinance in question, enacted in 1965, provided that villagers given reservation holes could not sell or lease them to anyone "who is not an enrolled member of the Village of Tyonek, Alaska."

A 1942 village law barring whites from remaining in the village for more than 24

hours was invoked.

Despite the prohibition, two houses were leased to the Pucketts and Slawsons. The village agreed to let them stay until the end of the school year. But when school was let out, they refused to leave. The village filed a lawsuit to evict them. The renters countersued, charging discrimination.

The case was heralded as the test case for drawing the legal line between racism and native sovereignty.

In 1986, U.S. District Court Judge James Fitzgerald dismissed the village's lawsuit, saying the federal court lacked jurisdiction to hear the dispute. But he also ruled that the village could not be sued for civil rights violations because, like other Native tribes, it was immune from liability for official acts of governance.

The renters and their landlords appealed, and the appeals court upheld the judge's immunity ruling. But that decision did not address the larger questions of In-

dian country. The plaintiffs appealed to the U.S. Supreme Court, which eventually sent the case back to the 9th U.S. Circuit Court of Appeals for further review.

In 1992, the federal appeals court ordered the case back to District Court for more work.

Over the years, the question of whether Tyonek has the power to enforce the 24-hour law against renters has never been litigated. But Holland's ruling this week effectively answers the question, Bazy Garber said.

Holland wrote, "The issue before the court at this time is not that of the power of an Indian tribe over its own property of third parties. Rather, the issues are tribal status per se and sovereign immunity."

Holland ruled the tribe does have sovereign immunity. Therefore, it can write and enforce its own laws and the village officers are immune from lawsuits, Bazy Garber said.