

"I may not agree with what you say but I will defend unto death your right to say it" -VOLTAIRE

Publisher's Notes

UNCERTAINTY OVER ALASKAN TRIBES IS OVER

A recent decision in the U.S. District Court's Ninth Circuit seems to have resolved an uncertainty which has persisted for some time in Alaska. The uncertainty? It has to do with whether or not Alaskan tribes are recognized by the federal government in the same way as sovereign tribal entities in the Lower 48.

Some have argued that though tribes in Alaska are recognized in federal statute for the purpose of distribution of social services, that they nonetheless were not recognized as governmental entities.

Most recently, the governor's task force on state, federal and tribal relations adopted a report that makes much of this apparently nonexistent distinction. The report has even been rumored to have been quoted by those defending a certain individual charged with the theft of tribal crests and other artifacts from a Southeastern clan. Their defense? If there are no tribes, how can our client be charged with stealing from one?

Judge Holland's recent opinion in *Akiachak vs. Notti* would seem to change all that. "Many of the Native communities (in Alaska) are, at least for purposes of federal law, recognized as "Indian tribes," writes Judge Holland. Later, he reiterates this point. "Native village councils... are beyond any question federally-recognized quasi-governmental entities."

The suit concerns AS 29.89.050, which was enacted by the Legislature in 1980. The statute made provision for state aid to Native village governments in the form of grants up to the amount of \$25,000.

After a question as to the propriety of such grants was made, the attorney general wrote an opinion calling into question the constitutionality of such a statute, unless the same grants were made available to other local, non-Native governments in the Bush.

Acting on the guidance of the attorney general's opinion, Commissioner Emil Notti of the Department of Community and Regional Affairs opened up the monies to other unincorporated communities. The problem then became the availability of funds, since the Legislature had never appropriated enough money to disburse grants to each community that applied.

Akiachak, Noatak and Circle Village then sued DCRA, seeking an injunction preventing the distribution of any funds until the court dealt with the issue. The injunction was granted.

The victory, however, was nothing compared to the unanticipated recognition, in very plain language, of the existence of Alaska Native tribes.

One cautionary note: One must always take the bad with the good, and so it is with *Akiachak vs. Notti*. In the latter part of Judge Holland's opinion, he seems to dash any hope that communities such as Akiachak, which seek to dissolve their municipal governments, would be entitled to the types of revenue sharing that incorporated communities now receive.

"It does not at first blush appear unreasonable to this Court that Defendant Commissioner (Notti) would preclude state aid recipients who are not local government units from using state aid for general administration purposes." Translation: If you want state money, the state constitution requires you to incorporate. Of course, the legal eagles will be busy with this one for a long time.