

Eagle Natives seek to exercise old powers

by Lloyd Benton Miller, Esq.

Recent news accounts and public statements concerning efforts by the tribal government of Eagle village to reorganize its constitution under the Indian Reorganization Act suggest a fundamental and possibly widespread misunderstanding of that law as well as the underlying Indian law principles which apply to Alaska's Native tribes.

Such misunderstandings, if unchecked, can only distract from the real issues at the very time when Alaska's tribes are desperately struggling to recapture their strength and preserve their cultural heritage.

The legal background to the present situation is instructive. Over 150 years ago the United States Supreme Court declared that, despite colonialization, American Indian tribes retained a special "quasi-sovereign" status within the United States.

Their sovereignty -- their power to act as governments and to resist impositions by other governments -- stemmed from their status as self-governing entities long before this Nation's birth. This was a matter of political organization, not mere racial classification.

At the same time, the federal government's superior power over the Nation's tribes meant that in the course of colonialization certain tribal powers had been lost.

This led to three rules, largely derived from international law, which still apply today. First, tribal entities are governments and possess all those inherent powers of self-government, over their members and their territories, which are not inconsistent with the superior government of the United States.

Second, these remaining inherent tribal powers may only be modified or extinguished by Congress, not the individual States.

Third, although states cannot usually apply their laws within areas subject to tribal control, the federal government can.

While state power in Indian country over non-Indians has been increasingly recognized

over the years, it still requires an act of Congress before a state may regulate Native affairs.

While tribes may not enforce tribal criminal laws against non-Indians, they can incarcerate tribal members, exercise civil and regulatory jurisdiction in Indian country, levy taxes to operate tribal government, impose zoning codes and establish health and safety codes, regulate inheritance, prohibit liquor use and sales, etc.

Such powers have been consistently recognized as "inherent" aspects of tribal political authority. They do not require any specific grant of any kind from the federal government.

Prior to the turn of the century, a quiet war of attrition was waged to break up tribal relations and sell off all tribal lands.

Tens of millions of acres were lost and scores of tribal governments collapsed.

By 1934 Congress changed course and decided to help rehabilitate these embattled tribal governments by enacting the Indian Reorganization Act.

The IRA largely intended to help needy tribes restructure their badly disorganized governmental institutions. It did not provide any mechanism for granting additional or new tribal powers: it merely enabled tribes to reorganize in order to exercise whatever inherent powers they already held.

Many Alaskan tribes embraced the invitation to revitalize their governments and adopt constitutions under the IRA procedures. Others found it unnecessary to use the IRA because they already had functioning governments under existing constitutions. Still others succeeded in maintaining effective governments without any formal constitution.

All of these tribes retained the same governmental powers that had been their birthright.

In an effort to improve their tribal government and to better meet the needs of their people, several years ago Eagle tribal members began to reorganize their tribal governmental institutions under the special provisions of the IRA.

As required by law, the tribe asked the Secretary of the Interior to review and approve its new government structure.

The Secretary did not act. Instead, a groundswell of opposition began to build drawing largely on two critical misunderstandings: it was mistakenly believed that Eagle's constitution would both grant the tribe new powers and also jeopardize the powers of the State. This was and is nonsense.

Eagle's constitution could not grant it new powers: it could only provide a government structure to exercise its existing powers.

Even if the Eagle tribe were seeking new powers, the Secretary would have no power to grant them. In truth, all the tribe seeks is a constitution that will allow it to operate a democratically-elected government, nothing more.

It is also incorrect to suggest that state power in Alaska could be diminished by tribal government reorganizations and reassertions of tribal governmental authorities necessary to meet modern needs.

Although states usually lack substantial power in Indian country, in Alaska thirty years ago Congress expressly granted the state criminal and certain civil jurisdiction in Indian country under Public Law 280.

State power in Alaska Indian country is therefore rooted in that statute, as well as the state's own inherent authority in Indian country over non-Natives.

Nothing a tribe could do

under its authority could change that statute or the state's power. The purported threat to state authority is therefore non-existent.

The Native people of Eagle have the right to choose their own political future. Unfortunately, despite their best efforts at careful and responsible reorganization, they have been caught in controversy over a different issue, that is, what powers that new government may in future years seek to exercise.

Fortunately, the Governor has for the time being reserved this larger question for further study by establishing a special commission representative of all interests. According to recent news accounts the State is not actively opposing Eagle's request for a new constitution.

This is indeed encouraging, particularly since similar battles waged by states hostile to Native rights have usually succeeded in only leaving a trail of hatred and racism.

The citizens of Alaska are best advised to acknowledge the political powers which Alaskan tribal governments have always possessed, and to work toward cooperative tribal-state agreements that will allow all governments in Alaska to operate harmoniously.

We must all accept that Native Alaskans will continue to hold fast to their tribal institutions even as the dark spectre of cultural assimilations grows. After all, Native Alaskans were here long before our Nation was founded and they are here to stay.

There is an alternative to vi-

triotic and pointless argument. Within Indian country Alaskan tribes can work side by side with state government, each exercising their respective powers. Disagreements over which areas constitute "Indian country" can be negotiated.

For some matters the state will lack authority and the tribal government will be there to fill that void. For other matters both authorities will overlap and be concurrent, not unlike the shared powers enjoyed by the state and its own local governments.

In yet other areas tribes will govern the internal affairs of their own members. Particularly in remote areas, where a tribe may be the only effective means of local government, the State may well appreciate the advantage of delegating some of its own authorities to such local tribes.

Many of Alaska's Native people look with hope that the special commission soon to be appointed by Governor Sheffield will embrace these possibilities and lead the way to a future of continued cooperation.

This is not to say that substantial problems do not exist ahead. But the sooner all sides recognize that the Eagle Village tribe, like all other tribes in Alaska and the State itself, has as its pre-eminent goal the health, welfare and culture of its people, and to develop good government responsive to the urgent needs of its people, the sooner a cooperative solution can be fashioned that is respectful of all Alaskans.