

# Natives' Regional Lawyers Dissect W.C. Arnold's Charges

*(EDITOR'S NOTE: Barry W. Jackson and Thomas E. Fenton, law partners in Fairbanks, have had a lot of experience working with native organizations, including the Alaska Federation of Natives, Tanana Chiefs, and Fairbanks Native Association. Their scholarly reply to W.C. Arnold, Anchorage Times columnist, brings out the real truth against the writings of Arnold who has scathingly attacked the AFN bill and the native land claims.)*

By BARRY W. JACKSON  
and THOMAS E. FENTON

The series of explanatory articles by W.C. Arnold on the Native Land Claims is interesting, but many of the facts stated bear little relation to reality. May we take this opportunity to correct the record?

"The Natives have no claim for title or compensation which can be established by legal action." The Natives have aboriginal title to most of Alaska, a

right to exclusive use and occupancy as against all persons other than the U.S. In court this right can normally be vindicated only by the U.S. Attorney, as attorney for the Guardian of the Alaska Natives, the Secretary of Interior.

The United States Congress may extinguish (expropriate) aboriginal title and give the land to third persons, and in this event, compensation by the United States is not a right protected by the 5th Amendment (no property shall be taken without just compensation) but, if paid by the U.S., is an act of grace. The Congress has uniformly made such payment.

Instead of extinguishing aboriginal title, Congress may "recognize" it, converting it into a title protected by the 5th Amendment.

Until aboriginal title is extinguished or recognized by Congress it continues, and the Courts will uphold it in an appropriate action. For example in *State vs. Hickel*, one of the issues is

whether Congress, through the Statehood act and other actions, has extinguished the aboriginal title of the land of the Natives of Nenana selected by the state. If

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it has not, then the state's title may be subject to the aboriginal title, and the state has only bare legal title, and the beneficial ownership remains with the Natives. Although the Court of Appeals probably will not reach this issue, if it does the implications are great, for it leads to the question, "Who owns the \$900 million?"

It is to the credit of the Natives that they have not filed multi lawsuits against non-natives occupying the land to which they have aboriginal title. Rather the Natives chose to have Congress settle their claims. This is of obvious benefit to both Natives and non-Natives.

" . . . no Alaskan attorneys representing Native groups has offered to defend the bill or explain its provisions. This leads some to believe that Alaskan attorneys were excluded from its preparation." We have defended the bill and we have explained its provisions, and we will again. We assisted in its preparation, but the policies reflected in the bill were determined not by Goldberg or Alaskan attorneys, but by the AFN Board of Directors. The bill is not perfect, but it is the most comprehensive of the three before Congress, and

many of its provisions are favorable to the state and non-Native Alaska. For example, one clause protects the state and third parties against future claims, and a second protects the state's share of Federal Highway Funds. Also locatable minerals would not be subject to the 2 per cent royalty, which is an attempt to accommodate the needs of the mining industry.

Native leaders are prepared to try to accomodate the needs of all other groups in Alaska. Some groups were not contacted before the bill was introduced, for lack of time and manpower, but the process of accommodation is continuing.

"If any Native has been molested by the state in his possession of the lands he occupies there is no record of the event."

Apparently, Mr. Arnold has not read the newspapers in the last few years. The state has selected everything in the Minto area except the village itself. Further, the Tanacross situation is particularly bad commencing with the George Lake World's Fair Estate sale and the current problems whereby the state has selected their villages and graveyards.

" . . . it places the hundreds

of millions or perhaps billions to be received by the Natives, as well as untold millions of acres of land, beyond the reach of the tax collector." This is a lie. The land and money will be held by taxpaying corporations. While you can disagree with the favorable tax treatment given both land and money, and we do as to several clauses, most of the land will be taxable and the corporations are fully taxable on their operations.

And most of the tax treatment provisions are fully justified by the theory of the Internal Revenue Code. If your land is taken by the Federal Government, you receive a tax break on the compensation also.

This covers the most serious arrors in Arnold's first articles. We will try to reply to the others as well.

Settling the Native Land Claims on a basis fair to all and in a way that benefits all Alaskans in years to come is a task requiring political leadership of the highest order, so that the necessary accommodations can be worked out. No one has to "lose," and all can gain.

We will be happy to discuss the proposed legislation with any interested group.