

Tribal governments will not be social clubs

By Paul Swetzof
For the Tundra Times

On Jan. 11, nine days before George Bush left office, the Solicitor General for the Interior Dept. issued an opinion regarding the powers of Alaska Native tribes. Many Native people were alarmed at the opinion because they worry this may be a substantial setback for tribes in Alaska. I don't believe the Solicitor's opinion either has much meaning or is any kind of a setback. It's highly unlikely the courts will give the opinion much standing especially since then Pres.-elect Clinton had asked the Bush administration not to issue an opinion and Pres. Clinton will likely withdraw it and issue a new and more favorable one.

First of all, the Solicitor who issued the opinion is out of a job. Pres. Clinton will be appointing a new solicitor who, the grapevine has it, will be very friendly to tribal interests. It appears likely this bogus opinion will be withdrawn by the new Sec. of Interior, Bruce Babbitt. Most people, especially Bill Clinton's people, understand the opinion was issued for political purposes by an outgoing administration, at the urging of Sen. Frank Murkowski, Interior/State liaison Vern Wiggins (he's gone), and Wally Hickel, was hostile to Alaska Native tribal interests.

The Solicitor's opinion was full of intentional errors and omissions. The opinion spoke to two issues: tribal status and Indian country.

The first part of the opinion was correct in concluding tribes exist in Alaska and they probably include all of the villages listed in the Alaska Natives Claims Settlement Act (ANSCA.) The second part was incorrect in stating ANSCA extinguished any Indian country in Alaska that may have existed prior to the Act.

The decision seemed, in my opinion, to be aimed at politically accomplishing two goals. The first was to state tribes exist in Alaska so the 100's of millions of dollars which tribes in Alaska receive from the feds and subsequently circulates in the Alaska econo-

my is not threatened. If tribes don't exist in Alaska, then a great deal of these funds are threatened and the loss of these funds would deal an economic blow to the entire state.

The second goal appeared to be certain Alaska tribes would not assert any authority or jurisdiction over lands in Alaska because the state is adamantly opposed to tribal jurisdiction under its "one people, one country" philosophy. I'm more than a little pleased to be one of many Natives to tell the state their attempts to kill off our cultures, turn our peoples in artifacts, and assimilate us

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under their "one people" idea will fail. Clinton's in and it's a new day and the favorable decisions made by the new administration will only be able to be reversed by Congress,

which is very unlikely. The state's attempt to turn our Native governments in federally funded social clubs, which is what they would be without jurisdiction over a land base, is doomed to failure.

The Native American Rights Fund (NARF) issued a preliminary critique of the Solicitor's opinion. They noted in the opinion's conclusion there is virtually no Indian country in Alaska and tribes therefore lack governing powers over land and non-members is based almost exclusively on ANSCA. NARF goes on to state a fundamental holding of Indian law is "tribal powers of self-government cannot be extinguished except by a clear and plain expression of such intent by Congress."

ANSCA is nothing more or less than a claims settlement. ANSCA said nothing about the extinguishment of government powers. NARF correctly points out even if doubt about the meaning of ANSCA were to exist that another fundamental principle of Indian law is that any doubtful or ambiguous provisions of statutes passed for the benefit of Natives must be resolved in favor of Natives.

The Solicitor's opinion conveniently failed to point out, among many other things, the leading resource book on Indian law, Felix Cohen's Handbook of Indian Law (1982) concludes Alaska Native villages, including ANSCA corporation lands, are Indian country subject to tribal authority. Another significant omission was the Solicitor's failure to point out the only federal court decision to directly address the issue of ANSCA and tribal status, "Chilkat Indian Village v. Johnson," issued in 1990, ruled ANSCA had not effect on the tribal status, Indian country status or territorial jurisdiction of the Chilkat Indian Tribe. The court ruled the "status of the dependent Indian community was not extinguished by the passage of ANSCA."

NARF is entirely correct in stating, "the Solicitor's opinion was clearly calculated to undercut the legal position of the numerous Alaska tribes who are currently in litigation with, among others, the state and major oil companies over tribal powers of self-government." And we are entirely correct in stating our time has come.