Barrow Children Taken by Trooper to Grand Jury Trial . . .

Enrollment . . .

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is rejected. A late application would fail to meet the requirement of time and would be rejected on that basis, probably marked: 'Not timely filed'."

A last-stand legal fight ensued at the regulations hearings just one day prior to the closure of the roll. Attorneys for the twelve native regional corporations claimed that many people had refrained from enrolling to certain villages until they were assured that those villages would be qualified under the Land Claims Act.

The confusion apparently stemmed from the fact that the Department itself had two definitions for the term "residence". For purposes of enrollment, it was only necessary to claim that your permanent residence was "the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home.

It is the center of the Native life of the applicant to which he has the intent to return when absent from that place.

A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually living there on that date, if he has continued to intend that place to be his home."

So goes one definition of "residence". Now presumably if 25 or more people enroll to a specific place, village, or site, it should qualify as a village and be entitled to land under the Claims Act.

But the criteria for village and the definition of "residence" changes and it is not clear if each and every place to which 25 or more people have referred as their permanent place of residence as of April 1, 1970, will in fact receive an entitlement of land.

A specific case in point is the village of Afognak in the Koniag region. 25 people have enrolled to Afognak and consider that they will ultimatley move back to the now-abandoned village.

However, two days before the end of the enrollment period, the people who had enrolled to Afognak did not know if it would be classified a village under the terms of the Act.

By not knowing, they stand to lose their right to acquire land as a village corporation.

One spokesman for the native groups requested that the Department go back to the concept of "residency" as outlined in the enrollment section of the Act and "remove the cloud that hangs over this whole group."

"People belong in certain villages, they want to enroll there, but they're afraid if they enroll to a village, it may not be qualified."

According to a representative from Koniag, one-half of their people enrolled to Kodiak through a "fluke in enrollment".

"Most of those people are from the villages and should enroll back to those villages. Now there are going to be one-half to share in 40 townships."

"All of this indecision is really affecting the people themselves. They're afraid. They don't know what to do."

Legal counsel for the Department of the Interior admitted that there were many divergent opinions within the Department as to the enrollment.

Attorney Weinberg, speaking for the Native groups said, "If the Department changed its concept of residency from enrollment, then it is going to have to start the enrollment process all over again."

"The time to register expires in a couple of days. But we are told here today that the concept of residence has changed. Either the Department must come through with a definition or it must extend. It cannot have it two ways. It cannot leave the peoples' rights dangling!"

There were, indeed, many who waited to the last hour to make their decision, and there were undoubtedly also, many who failed to make that decision prior to the deadline, midnight, March 30, 1973.

The first period of the Implementation of the Alaska Native Land Claims Settlement Act is ended. The Roll is closed.

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plaint against her husband.

In the meantime, the father voluntarily entered into an alcoholism and counseling program. In November, one of the children underwent an operation on both ear drums.

He was told that he should not travel by airplane for at least six weeks, as high altitude pressure could cause a rupture of the new ear drums.

On November 13, the State Trooper, Alphies Rowe, was directed to bring both children to appear before the grand jury in Fairbanks the following day.

Trooper Rowe deputized two persons to pick up the children at the BIA elementary school. They were taken out of school to their home where they were told to get enough clothing for a two-day stay in Fairbanks.

The father, who was home, inquired what was going on, but the children were allegedly told not to speak to their father.

According to the complaint, "At no time were the children, their parents, or anyone else in Barrow shown a subpoena or any other court order stating that the children were required to travel to Fairbanks."

Neither the father nor the mother were asked for permission for the children to go. By the time the mother contacted the airport, the children were already enroute to Fairbanks.

During their stay in Fairbanks Alaska Legal Services tried unsuccessfully to free the children and have them returned to the legal custody of their parents. There was a small perforation in the newly-mended eardrum of the one child as a result of the flight, but it appears at this date, to have mended with no permanent damage.

The children were accompanied on the trip by Trooper Rowe and his wife and were lodged in the Golden North Motel. There was no consultation with the parents as to these arrangements.

The legal question revolves around the rules governing the summoning of witnesses to appear at criminal proceedings and more specifically, whether the District Attorney can order a child to testify without the parents' knowledge.

Both Alaska Legal Services and the District Attorney's office confirm that a subpoena is merely a summons directing a witness to appear at a forthcoming trial.

A subpoena does not give the state the right to seize a person and escort him to the trial. Only if he fails to appear, can he be held in contempt and he may then be "escorted" to the court proceedings.

There are no rules for serving a subpoena on a minor child that differentiate from serving a subpoena on an adult.

However, an official form used by the Alaska State Troopers entitled "Service of Summons on Infant (Any Juvenile)" requires that two copies of a summons in a civil case be served, one on the child and one on the parent, guardian, or person having custody of the defendant.

The case in point is not a civil case and the form above does not apply. Yet it raises the question, should the parents be notified when children are ordered to take part in any legal proceedings? To what extent does a child understand the nature of a legal summons?

The complaint filed by the parents and the children state that the children were seized by the state without lawful authority and that, in so doing, the State of Alaska falsely imprisoned them and deprived them of their civil rights, causing emotional distress and mental anguish to both parents and children.

The position of the State, as stated by the District Attorney, is that the children "were not seized", and that they willingly accompanied Trooper Rowe after explanation was made to them.

The District Attorney's office alleged that they "were not in an alien environment", that they knew the people they were with (the Trooper's house in Barrow is only a few doors from the family in question), that they were not frightened, although they are "shy and bashful as most people from their environment are."

(It is interesting to note that at the same time the DA's office states they were NOT in an alien environment, it proceeds to use the term "people from THEIR environment".)

The fault may lie neither with the District Attorney's office nor the State Troopers, but in inadequate provisions for this type of incident in the bush.

The question arises whether the incident might have had a happier ending if whoever initiated the order had contacted the local official, in this case the

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AFN, Inc. Fights, Wins . .

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Limitations

– Definition of Navigable Waters

– Interim Conveyance

– Deficiency Withdrawals

Paul Gregory of Bethel made a strong speech in the Yupik language protesting the "modern and urban" interpretation. "95 per cent of the Natives in Bethel do not have running water," said Gregory.

"The only people who have such luxuries are BIA employees and other government workers. The town's one dentist serves not only Bethel," he pointed out, "but 52 other villages. Although Bethel has a fire and police department, the fire department is only a volunteer one and ineffective as proven by the number of deaths in Bethel each year due to fire."

Gregory claimed that it is unfair to discriminate against Bethel by labeling it "modern and urban" under the existing conditions.

John Schaeffer of Kotzebue drew a similar parallel. "The central water and sewer system in Kotzebue was put in by the PHS (Public Health Service). It is a very expensive one. They have spent 5 million dollars and it is not one-fourth done. It breaks down every day."

He admitted that Kotzebue had more than five businesses, one of the critera suggested for determining "modern and urban."

"The majority of businesses are financed by the SBA (Small Business Administration). The police department is funded through PEP, federal money. The fire department has one vehicle. The resident dentist does the majority of his work through contract with PHS. The schools, both elementary and secondary are BIA schools.

Schaeffer concluded, "The BIA and PHS are knocking Kotzebue out of the eligibility list!"

Several hours passed while lawyers for both sides attempted to define a village. At last, Jimmy Huntington of Galena stood up.

"In 1968 and 1969," said Huntington, "every damn town in Alaska was a village! Now you're trying to make non-villages out of them."

Huntington protested the needless wrangling over definitions that should be perfectly clear and which create unnecessary delays in implementing the Act.

"It's just like all the broken treaties in the past," he said. "Get them all screwed up, get all kinds of things put in there till nobody knows what they got. This is going to cost the native corporations thousands and thousands of dollars to try to settle things that didn't need settling at all."

The common-sense arguments won out. While the hearings were in session, native interests won an important concession from the government.

A phone call to Washington, D.C. to the Associate Solicitor of Public Lands for an interpretation on the modern and urban criteria produced a legal ruling that listed villages (those named in the Act) must be found to be BOTH modern and urban AND to have a majority of non-native residents to be disqualified as a village under the Land Claims Act.

The surprise ruling removed any shadow of doubt hanging over the eligibility of large native communities such as Kotzebue, Barrow, Bethel, Ft. Yukon, and Nome.

Legal counsel prior to the ruling had allowed that these communities might be technically disqualified under the proposed regulations.

The new ruling requires only that a listed village show a majority of native residents, and then the modern and urban do not apply. The village will qualify under the Act.

Another major gain in the three day meeting came when Berklund announced that he would instruct BLM to make immediate withdrawals of land for unlisted villages, those not named in the Act.

In spite of protests from many regions in the past, no lands had yet been withdrawn for unnamed villages which might qualify for land under the Act, leaving the lands unprotected.

Berklund's directive now clears the way for withdrawals for all villages that have been submitted by the BIA.

Still unresolved is the problem of deficiency withdrawals in some areas where public land is not available in the area immediately surrounding native villages. The Chugach region again levied protests against the choice offered them of useless mountaintops and glaciers.

On the final day of the hearings, Department officials met in private work sessions with individual regions to discuss just such problems. Much headway had been made, but much still remained to be done in Washington. The target date for the new version of regulations was set for May 15.

The bold action of AFN, Inc., supported by all twelve regions in unanimous consent, made it clear to the United States government that the Alaska Native people will fight equally as hard to maintain the integrity of the Settlement as they fought to win it.

They will journey once again to Washington, D.C. to insure that the regulations for the implementation of the Act reflect the philosophy and life-style of native people and "maximum participation" by those people.

Ethnohistorical . . .

(Continued from page 2)

by current cutbacks under the present Administration.

Perhaps the point to be made here is that we already have the laws, we all generally agree we need the protections and that the situation is critical in all aspects of historical, cultural, and archeological perservation and safeguarding throughout the state. We have the ways already established within the State Government, and the means are also available. Furthermore, this type of public service is not particularly costly, and so far it has been one of the most economic and efficiently managed services functioning for the benefit of all Alaskans,

Perhaps some of the current problem spelled out in the editorial stems from the fact that what work that is being done (and other things planned) have been approached quietly and with exceptionally knowledgeable and concerned Native People and professionaly trained and experienced researchers committed to getting an important task done before it is too late.

A great deal of Public understanding has been gained through the information and coverage in the Tundra Times. It is a pity that the other newspapers of the state do not follow your example, reporting the facts of what is going on and eliminating the the sensationalism attached particularly to ethnohistorical research that is in effect an open invitation to exploitation for personel adventure or financial gain. Please continue the campaign for sensible and sound research and documentation under the leadership and general guidance of the Native People for those elements of that past that concern them.

Regards,

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