

(7) Federal Register Notice of Final Determination

- June 18, 1992

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Miami Nation of Indians of the State of Indiana, Inc. Does not Exist as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.9 (h), notice is hereby given that the Assistant Secretary has determined that the Miami Nation of Indians of the State of Indiana, Inc., does not exist as an Indian tribe within the meaning of Federal law.

This notice is based on a determination that the Miami Nation of Indians of Indiana, Inc., does not meet two of the seven mandatory criteria for acknowledgment set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States. This determination was made following a review of public comments on the proposed finding to decline to acknowledge the group.

DATES: This determination is final and will become effective August 17, 1992, unless the Secretary of the Interior requests a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR 83.10(a)-(c).

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208-3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

A notice of the proposed finding to decline to acknowledge the Miami Nation was published in the *Federal Register* on July 19, 1990 (pp. 29423-5, Volume 55, No. 139). The 120-day period provided for in the regulations for comment on the proposed finding was extended several times at the request of the Miami Nation. The comment period closed on June 17, 1991.

Substantial comments and evidence were submitted by the Miami Nation (Indiana Miami) in response to the proposed finding. Limited comments, not containing substantive new evidence and/or arguments, were received from two other interested parties.

This final determination is based on a consideration of the new evidence and arguments submitted by the Miami Nation together with new evidence obtained by the Branch of Acknowledgment and Research (BAR) staff in order to evaluate the materials

submitted by the petitioner. In addition, the extensive evidence and arguments submitted by the Miami Nation or generated by BAR in the conduct of its own research in preparing the proposed finding were also considered in making this final determination.

The July 19, 1990, proposed finding against acknowledgment of the Miami Nation determined that the Indiana Miami fully met five of the seven criteria for acknowledgment. The Indiana Miami have been identified as an Indian entity throughout their history until the present by the Federal Government, local non-Indians, scholars, and other sources. They, therefore, met criterion 83.7(a). The Indiana Miami submitted a copy of their current governing document and the criteria used to determine eligibility for membership and therefore met criterion 83.7(d). Virtually all of the members could trace ancestry to Federal payment rolls created in 1889 and 1895 and thus were descended from the historic Miami tribe. They, therefore, met criterion 83.7(e). Less than one percent of the membership could be identified as a member of an already recognized tribe. The Indiana Miami, therefore, met criterion 83.7(f). A review of legislation affecting the Indiana Miami indicated that neither the petitioner, nor its members, are subject to congressional legislation terminating or forbidding the Federal relationship. The Indiana Miami, therefore, met criterion 83.7(g).

No evidence or arguments were submitted to refute the proposed finding that the Indiana Miami met criteria a, d, e, f, and g. Therefore, we conclude that the Indiana Miami meet these criteria.

The criterion in 25 CFR 83.7(b) requires "Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area and that its members are descendants of an Indian tribe which historically inhabited a specific area." The proposed finding concluded that the Indiana Miami met criterion b continuously from early historic times until at least the 1940's. It concluded further, however, that the available evidence was not sufficient to demonstrate that the present-day Indiana Miami constituted a distinct community within which significant interaction was maintained and, therefore, that the Indiana Miami did not meet the requirements of criterion 83.7(b).

We find that social contact within the present-day Indiana Miami membership is extremely limited in degree and extent, and there is virtually no social distinction between Indiana Miami

members and the non-Miamis with whom they interact. The Indiana Miami do not meet the intent of the regulations and the precedents underlying the regulations that, to be acknowledged as a tribe, a group must constitute a community which is distinct and whose members have significant social ties with each other. We conclude, therefore, that the Indiana Miami do not meet the requirements of criterion 83.7(b).

The criterion in 25 CFR 83.7(c) requires "A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present." The proposed finding concluded that the Indiana Miami met the requirements of criterion c until the early 1940's. The proposed finding concluded further, however, that tribal political processes involving leaders or organizations with a broad following on issues of significance to the overall Indiana Miami membership did not exist after the early 1940's and that the Indiana Miami, therefore, did not meet criterion c.

Although the Indiana Miami maintained tribal political authority which meets the requirements of the regulations until the early 1940's, after the early 1940's the activities and influence of the leadership and/or organizations claiming to represent the Indiana Miami became so greatly diminished that significant political processes no longer existed after that point in time.

There are no clearcut, significant examples of the exercise of political influence or authority among the Indiana Miami between the early 1940's and the late 1970's. The available evidence did not demonstrate, by alternative means, the exercise of tribal political influence. It was not demonstrated that claims, the primary activity of the Miami organizations between the early 1940's and 1979, was of more than nominal significance to the membership of the Indiana Miamis as a whole. The extent of involvement of most Miamis with the Miami organizations was too limited to meet the requirements of the regulations for a bilateral political relationship. Bitter, faction-like conflicts between Miami organizations in the 1950's and 1960's provided some, largely indirect, evidence that political processes may have extended beyond the organizations to at least a portion of the membership in general. There was also some evidence that cemetery protection was a political issue of importance to a large portion of the membership. Overall, the

evidence was not sufficient to establish that between the early 1940's and 1979 the Miamis maintained political processes which meet the requirements of the regulations.

The present-day Indiana Miami organization and its leadership do not have a demonstrable political relationship with most of the membership they purportedly represent, and they do not act on matters which are of sufficient importance to the membership to meet the requirements of the regulations for the exercise of tribal political authority. Thus the present-day Indiana Miami do not meet the intent of the regulations and the precedents underlying the regulations in the following ways: The members do not maintain a bilateral political relationship with the tribe, and the leaders do not act on at least some matters which are of consequence to members or affect members' behavior in more than a minimal way.

We find that the available evidence does not demonstrate that the Indiana Miamis in the period between the early 1940's and the late 1970's maintained political processes which meet the requirements of criterion c. We find further that the available evidence establishes that the present-day Indiana Miami do not meet the requirements of criterion c. We conclude, therefore, that the Indiana Miami have not met the requirements of criterion c.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, option other than acknowledgment would be available under which the petitioning group could make application for services and other benefits as Indians. No alternatives were found. A few members are also enrolled with recognized tribes and additional individuals may be eligible, on the basis of other than Indiana Miami ancestry, to enroll in a recognized tribe.

Requests to the Secretary for reconsideration may be made by any party and must be received within 60 days of the publication of this notice. Requests should be accompanied by a detailed statement of the grounds for the request and should include any new evidence to be considered. If necessary, the 60-day time limit in 83.10(a) may be extended to allow the Secretary a period of 90 days from the receipt of a request in which to act.

Under the regulations, the Secretary may request reconsideration of any decision but shall request reconsideration of any decision which in his opinion meets the requirements of 25 CFR 83.10(c)(1-3). If the Secretary receives a request for reconsideration, the Assistant Secretary—Indian Affairs will recommend that such a request be referred to the Interior Board of Indian Appeals (IBIA) and that the IBIA be authorized (pursuant to 43 CFR part 4) to determine whether reconsideration is

merited on the grounds stated in 83.10(c)(1-3) of the Acknowledgment regulations (25 CFR 83). The IBIA will be further authorized to either affirm this determination or, if the reconsideration request is merited, vacate the decision and return it to the Assistant Secretary for reconsideration. The IBIA will be authorized to request comments or technical assistance from the Assistant Secretary concerning the final determination and may, at its discretion, require a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the IBIA determines that further inquiry is necessary to resolve a genuine issue of material fact concerning the final determination.

This determination will become final and effective upon receipt by the Assistant Secretary of a decision by the IBIA to affirm the determination. If the determination is vacated and returned to the Assistant Secretary for reconsideration, the Assistant Secretary shall, in accord with § 83.10(a), issue a reconsidered determination within 60 days of receipt of the IBIA's decision. The reconsidered determination shall be final and effective upon publication in the Federal Register.

Dated: June 10, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

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