



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

MAY 21 1976

MEMORANDUM

To: Commissioner of Indian Affairs

From: Assistant Solicitor for Indian Affairs

Subject: Meaning of "Indian tribe" in section 4(b) of P.L. 93-638 for purposes of application to Alaska

In your memorandum of April 15, 1976, you have asked for our opinion on two related questions concerning implementation of Title I of Public Law 93-638, the Indian Self-Determination Act. You first ask whether a resolution from a Native village council, a village corporation, or a regional corporation will suffice as a request to contract under the Act. You also ask whether village and regional corporations are within the scope of the Act. Since the second question largely embraces the first, we shall address it at the outset.

Section 4(b) of the Act provides:

"'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians . . ."

Since both regional and village corporations find express mention in the definition, customary rules of statutory construction would indicate that they should be regarded as Indian tribes for purposes of application of this Act.



However, you are troubled by the qualifying language: ". . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians . . ." Indeed, profit-making regional and village corporations have not heretofore been recognized as eligible for BIA programs and services which are not provided for by the terms of the Settlement Act. But if the quoted language operates to disqualify them from the benefits of P.L. 93-638, then their very mention in section 4(b) is superfluous. Therefore, we think the better view is that Congress intended the qualifying language not to apply to regional and village corporations but to pertain only to that part of the paragraph which comes before the word "including." Accordingly, regional and village corporations are within the scope of the Act.

It follows that regional and village corporations may request to contract for the provision of BIA services under section 102 of the Act, and that they may also request grants under section 104. Such requests should be made by a resolution of a corporation's board of directors, which is its "governing body" for purposes of application of 25 CFR §§ 271.18 and 272.11. Alaska Native villages are also considered Indian tribes under the Act, and their governing bodies may also request to contract and receive grants. If, as suggested in your memorandum, the Bureau receives competing requests from villages, village corporations, and regional corporations for grants to serve the same clientele, then a determination must be made as to which potential grantee will put these funds to best use. After all, receipt of such grants is not a matter of right, but is based on the availability of appropriations. 25 CFR § 272.17(c). And if there are competing requests to contract, declination of a request may certainly be justified under the Act on the ground that competing contractors would not provide satisfactory services to the Indian beneficiaries.

A related problem, but one not mentioned in your memorandum, is that presented when a contract is let or a grant is made to a tribal organization to perform services benefitting more than one Indian tribe. The proviso in section 4(c) of the Act requires that the approval of each tribe benefitted

must be obtained prior to the letting of the contract or the making of the grant. Section 271.18(a) of the regulations in turn provides that such approval must take the form of an authorizing resolution from each tribal governing body. However, it has been suggested that where regional corporations or other organizations representing more than one village or village corporation propose to contract or receive grants under the Act, resolutions from each village or village corporation to be served should not be required. In support of this suggestion it has been pointed out that the contracting tribal organization may itself be an Indian tribe (for example, in the case of a regional corporation) and that obtaining resolutions from numerous villages may be an onerous task.

Nonetheless, the language of the Act is unambiguous. If a contract or grant benefits more than one village or village corporation, the approval of each must be obtained. This is not to say, however, that any contract with a regional corporation necessarily benefits every village or village corporation within its region. We can conceive of situations where a contract may be let to a regional tribal organization for purposes other than to provide direct benefits to certain villages or village corporations within the region. A determination must be made on a case-by-case basis whether or not an Indian tribe is actually benefitted within the meaning of the Act.

Indeed, it is not clear to us what it means for a contract to "benefit" a village corporation, as opposed to the Native village from which that corporation takes its stockholders. In some cases, the village may no longer have a governmental identity apart from the corporate structure. In other cases, a contract may be seen as providing services to individual village members without tangibly "benefitting" any particular village government or village corporation qua corporation. However, it does seem clear that if a contract is let to a regional tribal organization for the purpose of providing services in a given village, some governing body in that village must approve that contract. Whether it is the village corporation board of directors or the traditional village council which must give such approval--or both--depends on the circumstances in the given case. On this issue we understand that you will soon sign a memorandum to the Aberdeen Area Director which will provide some guidelines for determining when a contract or grant "benefits" an Indian tribe within the meaning of the Act.

We should also point out that the authorizing resolution required by the regulations is not a statutory requirement. The Act requires only the "approval" of the Indian tribe benefitted by the contract or grant. The Bureau in turn has implemented the statute by requiring resolutions from tribal governing bodies, and that is proper. However, if in a given situation the resolution procedure proves cumbersome, and a waiver of that procedure is found to be desirable as a matter of policy, we see no legal obstacle to such a waiver, as long as the tribe benefitted has had some opportunity to manifest its approval of the contract.

CHARLES M. SOLLER

Charles M. Soller

bcc: Secretary's files  
Docket's files  
DIA reading file  
CMSoller's file  
DRBarnes' file  
TVollmann's file  
JTalawyma's file

TVollmann:jt 5/21/76