

# Foreword to Native Law Selections: Recent Developments in Federal Indian Law as Applied to Native Alaskans

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As this issue of the *Alaska Law Review* went to publication, the combination of two events had a significant impact on the resolution of Native Alaskan sovereign status. The first of these events was the Department of the Interior's January 11, 1993 issuance of a Solicitor's Opinion discussing the governmental jurisdiction of Alaska Native villages over land and nonmembers. The Opinion concluded that some Alaska Native villages are "tribes" for purposes of federal law. Although it did not identify which *specific* Alaska Native villages are tribes, characterizing the determination as factual and beyond its scope,<sup>1</sup> the Opinion noted that Congress's listing of specific villages in the Alaska Native Claims Settlement Act ("ANCSA") and the repeated inclusion of those villages within the definition of "tribe" in post-ANCSA statutes, arguably constituted congressional determination that villages found eligible for benefits under ANCSA are considered Indian tribes for purposes of federal law.<sup>2</sup>

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1. Governmental Jurisdiction of Alaska Native Villages over Land and Nonmembers, Opinions of the Solicitor, U.S. Dep't of the Interior, No. M-36,975 3 (Jan. 11, 1993). The Opinion considered and explicitly rejected a variety of arguments advanced by the State against finding Native Alaskan tribal status, including the argument that the Alaska Native Claims Settlement Act extinguished the sovereign powers of Native villages that are tribes. *Id.* at 48-58, 107.

2. *Id.* at 58-59.

On October 21, 1993, the Bureau of Indian Affairs ("BIA") published a list of federally acknowledged tribes in the contiguous forty-eight states and Alaska.<sup>3</sup> The List, which includes over 200 Native Alaskan groups,<sup>4</sup> was published partially in response to the Solicitor's Opinion and partially in response to confusion about the status of Native Alaskan groups, created by the preamble to a list the BIA published in 1988.<sup>5</sup> The List concludes that the villages and regional tribes included "have functioned as political entities exercising governmental authority and are, therefore, acknowledged to have 'the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes.'"<sup>6</sup>

Taken together, the Solicitor's Opinion and the BIA's List appear to settle, for the purposes of federal statutory interpretation, the issue of tribal status for a number of Native Alaskan groups.<sup>7</sup> They also may indicate a general predisposition of the Clinton Administration towards the recognition of Native Alaskan sovereignty. These developments make the following two selections of even greater concern to the members of the Alaska Bar.

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3. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54,364 (Dep't of the Interior 1993) [hereinafter 1993 Indian Entities Recognized].

4. *Id.* at 54,368-69.

5. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 53 Fed. Reg. 52,829, 52,832-33 (Dep't of the Interior 1988).

6. 1993 Indian Entities Recognized, *supra* note 3, at 54,365.

7. See *United States v. Holliday*, 70 U.S. (3 Wall.) 407, 419 (1866) (holding that when the Secretary of the Interior and the Commissioner of Indian Affairs have recognized a tribe's sovereign status, "it is the rule of this court to follow the action of the executive . . . , whose more special duty it is to determine such affairs. If by them those Indians are recognized as a tribe, this court must do the same."); FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 3-5 (Rennard Strickland et al. eds., 1982 ed.).