



Recommendation 72-2

Conflict-of-Interest Problems in Dealing With Natural Resources of Indian Tribes

(Adopted June 9, 1972)

The United States acts as the trustee for the land and water rights of American Indians. Many legal disputes involving these rights, however, are between Indians and agencies of the United States which are charged with responsibility to protect Indian interests. Conflict-of-interest problems arising out of this dual involvement on the part of Federal agencies are troublesome and serious. The need exists to provide American Indians with independent legal counsel to assure adequate protection of their claims to natural resources.

Recommendation

A. Creation of Indian Trust Counsel Authority

1. *Functions.*—Legislation should be enacted to establish an Indian Trust Counsel Authority as a permanent, independent agency of Government. Its functions should be, with the consent of an aggrieved Indian, Indian tribe, or other identifiable group of Indians, to provide legal services necessary to protect their rights or claims to natural resources.

2. *Powers.*—In performance of these functions, the Indian Trust Counsel Authority should be empowered to:

(a) Represent, either through prosecution or by defense, the rights or claims of Indians in any formal or informal administrative or judicial proceeding before any agency or court of a State or of the United States;

(b) Receive and use as a tax-exempt organization funds or services donated from any source in addition to such appropriations as Congress may authorize;

(c) Appoint and fix the compensation of employees, regular or special counsel, consultants and experts; define their duties and responsibilities; and direct and supervise their activities; and

(d) Continue to receive the benefits and rights of the United States as a litigant.



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3. *Waiver of sovereign immunity.*—The United States should waive sovereign immunity with respect to claims, asserted on behalf of Indians by the Authority or its special counsel, which involve natural resources, including but not limited to rights in land, water, timber, minerals, hunting, and fishing.

4. *Notice of significant proposed actions.*—The Departments of Agriculture, Defense and the Interior should give notice to the Indian Trust Counsel Authority and any affected tribe of any proposed action which may significantly affect or impair the rights or claims of Indians. The Authority and tribe should have a reasonable opportunity to participate, in the manner appropriate to the nature of the proceeding, in the agency process resulting in any such action. This notice requirement, however, should be judicially enforceable only by the Authority or by the affected tribe.

B. *Administrative Solutions*

Prior to or in the absence of legislation, the Department of the Interior and the Department of Justice should take appropriate steps to ameliorate existing conflict-of-interest problems with respect to the handling of matters involving natural resources of Indians. The Department of the Interior should give consideration to expanding to other types of Indian matters the application of recent measures which established a separate Indian Water Rights Office.

Citations:

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2 ACUS 57

Note: This recommendation was not published previously in the Federal Register.