

Terry W. Clayton, Tara M Clayton

3945 Hwy. 8 #100

New Town, ND 58763

2/9/2021

To Whom it may concern:

In regards to SB 2318,S - Changes to the tribes ability to collect alcohol licensing fees and dual regulation. The current law provides that the tribe may not impose any direct or indirect tribal tax or fee on retailers. NDCC 57-39.10-05(4).

Simply put if the tribe was able to require retailers license fees and tribal tax with tribal regulations under this new bill, the liquor retailers would have no rights or jurisdiction in tribal law. In other words we have no way to defend ourselves in tribal court.

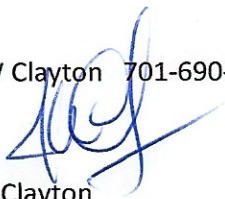

Attached is a letter in response to the tribe trying to tax us direct that we sent from our attorneys to the tribe – this makes reference to a federal case, US v Morgan, also attached a newspaper article from 1985 which specifically addressed that non- Indian fee simple land within the outer boundary of the reservation would never be subject to taxation.

This is of great concern to us, this will not only affect us but also every other type of retailers in the area and will effect a lot of jobs. Because we are governed under the State and the Mountrail county already we feel that we should have never had to retain attorneys and fight on this issue predicated on the ruling in 1985 stipulating that we would never be subject to taxation or regulation by the tribe.

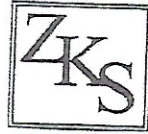
In closing I am not an attorney, but I believe under the constitution as a US citizen, non Indian, fee simple land owner the state cannot subject us to be regulated by tribal law in which we have no rights to defend ourselves.

Terry W Clayton 701-690-9281

Tara M Clayton

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December 31, 2020

VIA EMAIL:

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Mark Fox, Chairman, Tribal Business Council  
Mandan Hidatsa & Arikara Nation  
404 Frontage Road  
New Town, ND 58763

Dear Chairman Fox,

Please be advised that I represent Retailers who operate small businesses including bars and restaurants on fee land within the Fort Berthold Homestead Boundary. These businesses include: Ranchman's 23, Saddle Rack, Inc, Bruski's, Teddy's, Corner Liquor, Sportsmans Bar, LLC, Legion Bar, and Big Water Bottle shop.

I am in receipt of your December 18, 2020 correspondence to these business owners indicating that the Tribal Business Council (TBC) is no longer suspending the alcohol licensure requirements. The TBC had been continually suspending the licensure requirements pending negotiations with the state regarding taxation and regulation.

We would respectfully request that the TBC suspend the alcohol licensure requirements for 30 days and allow the Retailers to negotiate directly with the state.

My clients are not willing to agree to the burdensome and intrusive nature of the ordinances; nor are they comfortable submitting to tribal regulation, control and jurisdiction. We do believe that direct negotiations between yourself and the Retailers could address all parties' interests.



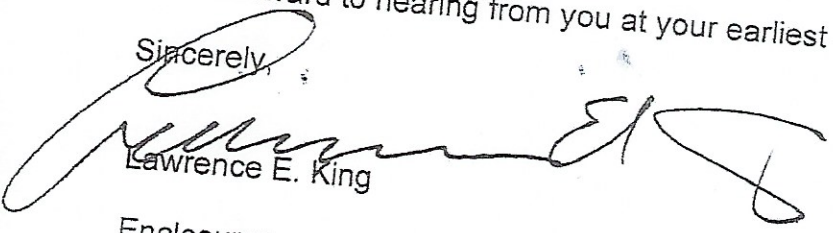
As you are aware, in U.S. v. Morgan, 614 F.2d 166 (8<sup>th</sup> Cir.1980) the businesses were operating on fee-patented lands and were considered within non-Indian Communities and therefore exempt from the liquor requirements that the Standing Rock Sioux Tribe attempted to impose. Obviously, we are aware of the City of Timberlake v. Cheyenne River Sioux Tribe, 10 F.3d 554 (8<sup>th</sup> Cir.1993) decision. As that case noted, generally one panel of the Court must follow the decision of an earlier panel. In City of Timberlake, the panel attempted to distinguish the Morgan decision. It is our position that the situation my clients are in is similar to that in the Morgan case. We believe that if litigated the "Homestead" area will be found to be non-Indian community pursuant to the Morgan decision.

Also enclosed is a newspaper article from 1985. The article addressed the MHA Nations Constitutional amendment attempting to assert jurisdiction over all people and property on the reservation. It sought to include the "Homestead" area including Parshall and New Town. A local group met with Senators Andrews and Burdick and Representative Byron Dorgan as well as the Undersecretary of the Interior. The individuals were assured that the people on the "Homestead Area" would continue to have all of the rights as citizens of the United States and the State of North Dakota. Particularly, according to the Undersecretary of the Interior "even if the constitution of the Three Affiliated Tribes was changed and approved, it would only affect those persons on "TRIBAL" or "TRUST" lands within, but not on any "fee patent" land such as is held in the present Fort Berthold Homestead Boundary. We believe the present Congressional delegation would continue to support that position.

Obviously, a lengthy, drawn out legal battle is not in the interests of any of the parties. As such, it is our hope that the MHA Nation will agree to suspend the liquor license requirements for 30 days and enter into good faith negotiations with my clients, the Retailers.

I look forward to hearing from you at your earliest convenience.

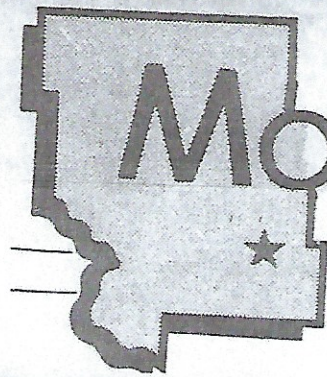
Sincerely,

  
Lawrence E. King

Enclosures

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# MOUNTAIN TRAIL CO

OFFICIAL CITY NEWSPAPER

VOLUME NO. 70-34

WEDNESDAY, M.

# JURISDICTION

## "Homestead Reservation" Jurisdiction Settled

The argument of the jurisdictional rights on the Fort Berthold Reservation have been settled. Parshall Mayor Al Christianson, Aldermen Arlo "Bucky" Jacobson, Whit Dwyer and City Auditor Loren Hoffman made a trip to Washington, D. C. last week and met with Senators Andrews and Burdick and Rep. Byron Dorgan and Pete Taylor, General Counsel to discuss the recent election by the Three Affiliated Tribes to change their constitution to read, "they have jurisdiction over all people and property on the reservation" which was to include the "homestead" area including Parshall and New Town. Both Senators Burdick and Andrews assured the Parshall delegation: "that the people on the 'homestead area' of the Fort Berthold Reservation which includes Parshall and New Town have all their rights as citizens of the United States and the State of North Dakota."

According to the Congressman and Secretary of Interior Hodel, "even if the Constitution of the Three Affiliated Tribes was changed and approved, it would only affect those persons on 'TRIBAL' or 'TRUST' lands within, but not on any 'fee patent' land such as is held within the present Fort Berthold Homestead boundary.

The group met with Sens. Burdick and Andrews and General Counsel Pete Taylor on Thursday morning, March 21 and discussed the resolution of the Tribe's constitution and dealing with jurisdiction with Indians and non-Indians. And when they met with the Secretary of the Interior Hodel they asked him not to ratify the resolution and election until all facets of the resolution were investigated, check out and determine the legal rights of both parties, Indian and non-Indian.

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On Friday morning, the group met with Rep. Byron Dorgan, Bill Horn 2nd Under Secretary of the Interior and discussed the ramifications of the election and resolution of the Tribes. Again the delegation was assured that the resolution would be checked thoroughly before it was ratified and reassured that the resolution would not affect any but "Tribal" and "Trust" land. i. e. it would not affect any non-Indian on the "Homestead" portion of the Fort Berthold Reservation which includes the towns of Parshall and New Town.

Also the group was told that the Tribes "Could Not Tax" any of the lands or businesses in the "Homestead" portion of the Reservation which includes Parshall and New Town.

The only thing, that was stipulated at the meeting was, "any non-Indian who wanted to do business on the 'Indian Reservation' or 'Tribal' or 'Trust' lands, the Tribes could tax and regulate that business.

Among other questions asked was "Could the Tribes stop our water plant from being built? The answer was "no", because no Tribal or Trust land was involved and the Tribes could not control the water intake from the lake.

"Can the Tribes stop people from fishing on the lake?" Again the answer was "no", because public access did not belong to the Tribes, however, if you have to cross Tribal or Trust land to get to where you are going, they could stop you.

The following is a letter to Sen. Mark Andrews from Pete Taylor General Counsel concerning the election and resolution...

"Sen. Mark Andrews Re: Ft. Berthold Constitution. On Jan. 18,

1985, Leo Brockie, Supt. of the Fort Berthold Indian Reservation, issued a Notice of a Secretarial Election for the purpose of amending the constitution of the Three Affiliated Tribes of the Fort Berthold Reservation. The election is being held today (Mar. 11) and the results will be announced tomorrow.

While there are a number of changes in the constitution, the most important one is that dealing with tribal jurisdiction within the bounds of the Fort Berthold Reservation. Under the existing constitution, the jurisdiction of the Three Affiliated Tribes is limited to Indian trust and tribal lands. The revised constitution will extend the tribal jurisdiction to "all persons and all lands," including lands held in fee, within the exterior bounds of the reservation."

Over the past two weeks we have received a number of letters from non-Indians residing within the homestead area of the reservation objecting to this proposed constitutional amendment. On the face of it, the proposed constitutional change would grant extensive powers to the tribal government. However, as a practical matter, the constitutional amendment **CANNOT VEST IN THE TRIBES ANY MORE AUTHORITY THAN IS RECOGNIZED TO REPOSE IN ANY OTHER TRIBAL GOVERNMENT** (ed's. caps). The authority of the tribe is limited by any applicable federal statutes or judicial decisions. Indian tribes inherently lack criminal jurisdiction over non-Indians even when they are on Indian lands (Oliphant v. Suguamish Tribe (1978) and their authority to regulate non-Indian hunting and fishing on non-Indian or fee patent land within a reservation is limited to regulate activity directly affecting an

activity directly affecting an natural resource or activity of the (U. S. v. Montana (1980)). do have limited powers to regulate non-Indian activities that have a direct relationship to a tribal interest. Thus the courts have recognized limited authority of tribal matters of zoning and land and the Solicitor's Office at Interior has recognized tribal authority over non-Indians on matters involving use of herbicides when the application of such herbicides effect tribal lands.

Tribes are recognized to have authority over issuance of business licenses and taxation, but it is knowledge no tribe has ever successfully imposed a business license requirement or a tax on Indians who were not actually occupying Indian owned lands. sole exception that I am aware of was a tribal ordinance requiring a business license to operate a loon within the Wind River Reservation in Wyoming and the tribe that case acted under a federal statute that authorized the tribe to impose such a requirement. (U. S. v. Mazurie (1973)).

Looking at the proposed revision of the constitution of the Three Affiliated Tribes from an objective standpoint, there is no question but what tribal authority over its own members extends any way within the boundaries of the reservation. However, under the existing tribal constitution, the Three Affiliated Tribes cannot legally exercise jurisdiction over their members unless they are on Indian owned land. If the tribes are to exercise lawful jurisdiction over their own members for conduct within the reservation but off Indian owned land, then this constitutional revision is necessary.

## Moderate Growth Predicted For State's Non-Farm Economy

Peoples Bank & Trust Wins State's "A"