

Between Worlds - Tribal Sovereignty

Tribal Sovereignty

The loss of tribal powers is seen by some as one of ANCSA's greatest failings.

By LORI THOMSON
THE JUNEAU EMPIRE

They gained full title to the land, but lost the power to govern it.

That's what the Gwich'in people of Venetie and Arctic Village got from the Alaska Native Claims Settlement Act.

The U.S. Supreme Court last year ruled that, because of the Alaska Native Claims Settlement Act, the 1.8 million acres of land owned by the Venetie Tribe is no longer "Indian country," as is reservation land in the Lower 48. Thus, the tribe, which includes the villages of Venetie and Arctic Village, has no governing power over the land.

Supporters of tribal sovereignty point to that decision as one of the settlement act's great failures.

"I think ANCSA did a lot of things that people did not realize it was going to do that have turned out to weaken Native political identity," said Tanana Chiefs Conference President Will Mayo.

About the U.S. Supreme Court's 1998 Venetie decision

The people of Venetie and Arctic Village tried to get out of ANCSA.

Because they had formed a reservation some 30 years earlier, an option in the law let them forgo cash and stock in the regional corporation for Interior Alaska and take full title to the 1.8 million acres of former reservation land instead. Previously the reservation land was held in trust by the federal government.

The choice between cash and land was an easy one, residents said.

Venetie traditional Chief Abraham Christian: \"Money goes and it doesn't come back, but the land, it'll be there as long as we're there.\"",

PHOTO BY BRIAN WALLACE

The option was available only to communities whose reservations were being abolished by ANCSA. The act eliminated all reservations, except the Metlakatla Indian Community on Annette Island in Southeast Alaska.

The Supreme Court last year ruled that even though Venetie had opted to take its ANCSA land and skip the cash, the land claims act had removed the Indian country status of that land.

\"ANCSA transferred reservation lands to private, state-chartered Native corporations - with the goal of avoiding 'any permanent racially defined institutions, rights, privileges or obligations,\" Supreme Court Justice Clarence Thomas wrote.

The Supreme Court left open the possibility that there may yet be pockets of Indian country in Alaska because Native allotments - parcels of land granted Natives before ANCSA's passage - may meet the definition of Indian country.

-- CATHY BROWN

A complex interplay of state and federal laws and judicial decisions makes it difficult to say exactly what the Venetie decision means for tribal governments in Alaska, lawyers said.

Tribes still have some power, says Alaska's Deputy Attorney General Barbara Ritchie, but those are powers mainly over their members, not their land.

They can govern their own internal affairs, such as who qualifies for membership. And they may have jurisdiction over some civil matters involving their members, such as child custody, divorce and wills, says Heather Kendall Miller, the attorney who argued Venetie's case before the Supreme Court.

But without Indian country status, tribes can't take some of the actions other local governments can, such as tax non-members doing business in their community

or fine non-members who break tribal laws dealing with things like alcohol possession. How much power they have over their own members in those matters is not clear.

Maggie Roberts holds a beaver hide that she was tanning in her smokehouse located next to her cabin in Venetie. Roberts makes hats, mittens and sometimes slippers with the beaver skin. She also tans caribou and moose. "I do everything myself. My mamma used to do that too," she said. Regarding the Alaska Native Claims Settlement Act, Roberts said: "We told 'em we don't want no money. We want our land."

PHOTO BY BRIAN WALLACE

The Venetie case was watched closely by other Alaska Natives, some of whom saw tribal sovereignty as a way to address problems state and local governments have been unable to fix.

"When the Venetie case went through, we wept. I cried," said Richard Carroll Jr., who is pastor of the Assembly of God Church in Fort Yukon. "We prayed for it, we prayed for it in church even. I had the church open all week for prayer meetings."

Fort Yukon, where Carroll lives, is an Interior village where the tribe and the city government have clashed. The city owns a liquor store, and tribal leaders believe alcohol is hurting their people.

Carroll's teen-age son killed himself while under the influence, although the alcohol was allegedly purchased from a bootlegger.

Some legislators have argued that if rural Natives want to govern their land, they should form a municipality. And almost 60 percent of Native villages have. But tribal advocates say municipal government doesn't fit the needs of all communities.

In some places, municipal governments are alien institutions that people aren't comfortable with, attorney Kendall Miller said. The municipal code is more than

300 pages long.

And in traditional governments, decisions are made differently - by consensus and with a great deal of input from elders.

She compares it to the discomfort many Americans would feel if a foreign government, for instance the Saudi Arabian system, were imposed on them. A local government system that works is important. A Harvard research project found that effective self-governance was the most important factor in whether tribes in the Lower 48 were successful at economic development, according to Vic Fischer, a professor at University of Alaska Anchorage's Institute of Social and Economic Research. It was even more important than availability of natural resources.

Another reason some communities don't want a municipal government is that running several entities - a municipal government, a village corporation, a tribal council and other organizations - spreads small communities too thin, Kendall Miller said.

Richard Carroll Jr., a pastor in Fort Yukon, looks over the Yukon River as he talks about the Venetie case: "We prayed for it, we prayed for it in church even." During the Supreme Court's hearings on Venetie and Arctic Village's sovereignty claims, he kept his church open for prayer meetings.

PHOTO BY BRIAN WALLACE

A municipal government can leave a community at risk of being taken over by non-Natives who may be more savvy at working within that system than Natives are, said Mayo of Tanana Chiefs Conference.

The exclusion of non-Natives from tribal governments, however, is a key reason tribal governments make many people uneasy.

"Our idea of government is if you're going to be governed, you should have some say in that government," Ritchie said.

State officials had also argued in the Venetie case that Indian country would have created chaos in Alaska, with as many as 200 different tribes adopting

different laws dealing with issues from fish and game management to taxation.

Tribes like Venetie that own a lot of land still have a fair amount of power as landowners. They can charge use fees and forbid trespassing. But in Alaska, most tribes own little land because the settlement act put land in the hands of village and regional corporation, over which the tribes have no control.

A Rural Governance Commission, appointed last year by Gov. Tony Knowles, is trying to sort out exactly what powers tribes have and how the state and tribes can work together more cooperatively than in the past to address problems in rural Alaska.

The commission won't have any recommendations until later this year, co-chairman Byron Mallott said.

Meantime, the people of Venetie have appealed to the United Nations for support, and the Alaska Federation of Natives is calling for a constitutional convention to consider recognizing Indian country powers for tribes. The AFN also raised the idea of breaking off parts of the state into a separate state or commonwealth.

The people of Venetie and Arctic Village said they've been going about business as usual, despite the Supreme Court decision.

"We're proud of what we've done and we're proud of what we're doing," said Gideon James, tribal operations director for Venetie. "It works. We're healthy people. We have healthy children. We keep our air clean, our water clean.

"Our way of life is going to be here for many generations and they need to know that, they need to respect that."