Testimony on H.R. 4445
"Indian Pueblo Cultural Center Clarification Act"
By
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Committee on Resources

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Chairman Rahall, members of the committee. My name is Ron Solimon. I am a member of Laguna Pueblo and President and CEO of the Indian Pueblo Cultural Center (Cultural Center), a state-chartered, non-profit organization owned by the 19 Pueblos of New Mexico. I also am the President and CEO of Indian Pueblos Marketing, Inc., a Federally chartered for-profit corporation, which is the business arm of the Center.

Overview of the Indian Pueblo Cultural Center

The Cultural Center was founded over 30 years ago after the enactment of Public Law 95-232 in the middle of Albuquerque, New Mexico on the site of the old Albuquerque Indian School. Today, the Cultural Center sees more than 300,000 visitors per year and employs more than 150 people. Its mission is:

> *"To preserve and perpetuate Pueblo culture and to advance understanding by presenting with dignity and respect, the accomplishments and evolving history of the Pueblo people of New Mexico."*

The Cultural Center is overseen by a five member board of representatives appointed by the 19 Pueblos. Two members are chosen by the Northern Pueblos, two are chosen by the Southern Pueblos, and one is chosen from the Albuquerque business community. The Cultural Center operates the only museum dedicated solely to Pueblo history and culture in the nation, several galleries used to highlight current and former cultural pieces and exhibits, the Institute of Pueblo Studies, the Center for Native American Health Policy, Pueblo Archives, and a wide range of cultural education programs including traditional dance performances, children's educational programming, arts and crafts demonstrations, and lecture series.

The operations of the Cultural Center are funded by support provided from Indian Pueblos Marketing, Inc. (IPMI), admissions, and state, federal, and private grants. IPMI is a federally chartered, for-profit corporation owned and operated by the 19 Pueblos, and was established to generate revenue to support the short and long-term self-sufficiency of the Cultural Center. The current businesses include: a gift shop; restaurant; catering and banquets, meeting space and office rentals; and a travel center.

Private foundation funding has come from a number of sources including the Robert Woods Johnson Foundation and the Marguerite Casey Foundation. The State of New Mexico has helped to provide more than $4 million in capital improvements for recent expansions to provide new galleries and meeting space, a new children's education center named "Pueblo House," and additional office space. Federal funding has come in a variety of competitive grants.

The Cultural Center has been highly successful in using a wide variety of sources to perpetuate its mission. Central to the Cultural Center's ability to self-sustain itself is its tax exempt status.

Intent of H.R. 4445

The intent of the Indian Pueblo Center Cultural Clarification Act is to clear up an inconsistency in Public Law 95-232. Under section (b) of that Act, the land was:

> *". . . held in trust jointly for such Indian pueblos and shall enjoy the tax-exempt status of other trust lands, including exemption from State taxation and regulation. However, such property shall not be "Indian country" as defined in section 1151 of title 18, United States Code."* (Emphasis added)

It is clear that Congress intended to afford the Cultural Center trust land with the same exemptions from state taxation and regulation enjoyed by other tribal trust land, but the next sentence indicating that the property shall "not" be Indian Country has caused some confusion.

To understand the conflicting language of Public Law 95-232, one must understand the circumstances of trust land in 1978. Long before 1978 the law was clear that tribal trust land was not subject to state ad valorem property taxes. The Kansas Indians, 5 Wall. 737 (1867). However, it was also clear that this federal Indian law exemption was not limited to taxation of the land itself. As of 1978, it was well-established that states do not have the power to tax or regulate the activity of tribes or tribal members on land held by the United States in trust for that tribe. Bryan v. Itasca County, 426 U.S. 373 (1976); McClanahan v. State Tax Commission of Arizona, 411 U.S. 164 (1973). Therefore, by declaring the Cultural Center property as trust land, would have the same exemption from state taxation and regulation as other trust land. Congress clearly intended that Pueblo activity on the trust land (and buildings) would be exempt from state taxation and regulation.

Based on the law as it stood in 1978, the intent of the statement that the property shall not be "Indian country" is less clear. As of 1978, it was well-established that 18 U.S.C. § 1151 defined the territory in which crimes by or against Indians were subject exclusively to federal and tribal law, rather than state law. Certainly, 18 U.S.C. § 1151 by its express terms applied only to the federal criminal statutes. Therefore, the "not Indian country" language in Section (b) might have been intended to address questions of criminal

jurisdiction, but even that is not entirely clear. Nonetheless, Congress would not have understood the "not Indian country" statement to be inconsistent with the exemption from state taxation and regulation confirmed in Bryan and McClanahan. Congress would not have thought in 1978 that declaring the Cultural Center Trust Land shall "not be Indian country" would in any way conflict with the exemption from state taxation and regulation confirmed in the immediately preceding sentence of Public Law 95-232.

Supreme Court Decisions After 1978

Nine years after Public Law 95-232 was enacted, the Supreme Court created an apparent contradiction within Section (b) when it held that the definition in 18 U.S.C. § 1151 also generally applied to questions of civil jurisdiction. See, California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). This apparent contradiction became even more stark in 1991, when the Supreme Court held that tribal trust land qualifies as "reservation" land under 18 U.S.C. § 1151(a), that trust land is "Indian country" whether or not the land is a formal reservation, and that states cannot impose their taxes on tribal activity within that trust land. Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505 (1991). The exemption from state taxes recognized in Potawatomi is consistent with the exemption from state taxes recited in Public Law 95-232. On the other hand, Potawatomi established that tribal trust land is by definition part of Indian country, while Public Law 95-232 stated that the Cultural Center land will be held in trust but will not be Indian country, without any explanation of the intent behind that statement.

In light of these post-1978 court decisions, Congress today would not declare that the Cultural Center land would be held in trust for the Pueblos and enjoy the same exemption from state taxation and regulation as other trust land, but will not be Indian country. Congress now knows that tribal trust land is, by definition, part of Indian country. Congress cannot be faulted for failing to anticipate how subsequent Supreme Court decisions would create apparent contradictions in the language Congress used. H.R. 4445 would amend Public Law 95-232 to eliminate this unanticipated contradiction, which has arisen due to Supreme Court rulings.

The Problem Created by the Contradiction in Section (b)

The "not Indian country" language in Section (b) of Public Law 95-232 is not just an academic problem. The New Mexico Taxation and Revenue Department ("NMTRD") has taken the following irreconcilable and inconsistent positions on the significance of that phrase:

In 1997, a hearing officer of NMTRD decided that the state could lawfully impose its gross receipts tax on a Pueblo member who engaged in business at the Indian Pueblo Cultural Center. In the Matter of the Protest of Val Tech & Associates, NMTRD Decision and Order, No. 97-26. The hearing officer concluded that Congress intended to authorize the state to tax Pueblo activity on the Cultural Center trust land by stating in Publ. Law 95-232 that the land will not be "Indian country as defined in section 1151 of

title 18, United States Code." The hearing officer relied on the post-1978 court decisions applying the Indian country definition to taxation. The hearing officer's decision was not appealed, so no court has reviewed it.

In 1998 the Department assessed cigarette and tobacco taxes against Indian Pueblo Marketing, Inc., ("IPMI") based on the Val Tech Decision. In 1999, NMTRD entered into a Closing Agreement with IPMI withdrawing the assessments. The Closing Agreement was approved by the Department and the State Attorney General and recited that Public Law 95-232 "does not reflect any intention by Congress that the Pueblos' activity on the Cultural Center Trust Land would be subject to state taxation." The Closing Agreement flatly contradicts the Val Tech Decision.

IPMI has conducted retail business operations on the Cultural Center Trust Land since 1987. During that 23-year period, IPMI has never paid state taxes on its business operations at the Cultural Center, and the state has assessed taxes against IPMI for its business operations at the Cultural Center only once: the 1998 assessment was later abated in full by NMTRD.

In 2000, 2004 and 2008 NMTRD declined to issue a written ruling requested by IPMI confirming that it is exempt from state taxation for its business activity on the Cultural Center Trust Land, based on the Department's 1997 Val Tech decision.

The Pueblo shareholders therefore are left in the uncertain and risky position that the New Mexico Taxation and Revenue Department may decide that the 1997 Val Tech Decision is controlling, notwithstanding the 1999 Closing Agreement that rejected the analysis of the Val Tech Decision. The source of this uncertainty is the apparent contradictory language in Section (b) of Public Law 95-232.

The Status of Other Jointly Held Pueblo Lands

Since 1978 Congress has taken other land in trust jointly for the New Mexico Pueblos on two separate occasions:

1. The Santa Fe Indian School Act,@ Public Law 106-568, §§ 821-824, 114 Stat. 2868, 2919 (131.43 acres).
2. The "Albuquerque Indian School Act," Public Law 110-453, §§102-104, 122 Stat. 5027 (8.4759 acres).

In both of those enactments Congress declared that the land would be held in trust for the Pueblos, but did not find any need to confuse the jurisdictional status of those lands by stating that the new trust land would not be Indian country.

In addition, in 1993 the Secretary of the Interior took 44.201 acres of the Albuquerque Indian School property in trust for the New Mexico Pueblos pursuant to 25 U.S.C. § 2202 and § 465. The Trust Deed simply recited that this land was placed "in trust for the equal benefit of the Indian Pueblos of New Mexico." Again, the Secretary did not confuse the

jurisdictional status of that trust land by stating it would not be Indian country – as is all other tribal trust land.

The "not Indian country" language in Public Law 95-232 is the only exception to this practice. The Cultural Center Trust Land should have the same legal status as these other lands placed in trust for the New Mexico Pueblos. This can be accomplished by repealing the language in Public Law 95-232 that states this property shall not be Indian country.

Impact on County and City Taxes

The discussion above addresses the federal law governing state taxation and regulation of tribal activity on land held by the United States in trust for a tribe or a group of tribes. The same laws apply to attempts by a political subdivision of a state – such as a county or city – to tax or regulate that same activity. When Congress has provided that the United States will hold land in trust for Indians, "it doubtless intended and understood that the Indians for whom the land was acquired would be able to use the land free from state or local regulation or interference as well as free from taxation." Chase v. McMasters, 573 F.2d 1011, 1018 (8th Cir. 1978) (emphasis added). Since the counties and cities derive all of their powers from the state, those political subdivisions cannot have authority over tribal trust land that the state itself does not have.

In fact, neither Bernalillo County nor the City of Albuquerque has even attempted to impose any tax on IPMI or Pueblo members based on their activity or property on the Cultural Center Trust Land. Likewise, the county and city have never attempted to tax the Cultural Center Trust Land itself, or the substantial improvements on that land.

Therefore, H.R. 4445 will not have any impact on the tax revenues of Bernalillo County or the City of Albuquerque. Those political subdivisions of the state do not derive any tax revenue from the Cultural Center Trust Land now, and will not derive any tax revenue from that land after H.R. 4445 is enacted.

Conclusion

The passage of H.R. 4445 will clarify the intent of Public Law 95-232. It will ensure that the Cultural Center is afforded the same treatment as other Indian trust land held in trust for the Pueblos in New Mexico. It will ensure that the business activities, which are the primary source of support for the activities of the Cultural Center, will continue as they have for the past 23 years. I thank Representative Martin Heinrich for sponsoring this important legislation and Chairman Rahall and the Committee for the opportunity to testify on H.R. 4445. I now stand for questions.