

Advisory Memorandum

To: All DOI Bureau and Office Heads

From: Assistant Secretary - Indian Affairs /s/ February 24, 1995

Subject: Guidance on the Federal/Tribal Government-to-Government Policy

On April 29, 1994, President Clinton issued an historic directive to each federal department and agency mandating that the rights of sovereign tribal governments are to be fully respected. The memorandum, which is attached to this document, directs that certain principles are to be followed by all federal entities when dealing with tribal governments in deference to the government to government relationship between the United States and American Indian and Alaska Native tribes. Pursuant to the President's directive, each bureau and agency is required to develop action plans to implement the principles it sets out. This memorandum is intended to assist in the incorporation and implementation of the President's directive into the daily activities and decision-making processes of all the Department's bureaus and offices.

I. BACKGROUND

A. Why are tribes recognized as having governmental status?

Article 1, Section 8 of the Constitution of the United States vests the Federal Government with the authority to engage in relations with the tribes, and, thereby, firmly places tribes in the Constitutional family of our nation. When the governmental authority of tribes was first challenged in the 1830's, Chief Justice John Marshall articulated the fundamental principle, which has guided the evolution of federal Indian law to the present day, that tribes possess a nationhood status and they retain inherent powers of self-government. The government-to-government relationship to which the President refers, therefore, is Constitutionally derived, and is firmly rooted in Supreme Court doctrine and federal statutory law.

B. What are the inherent powers of tribal self-government?

Tribes possess all powers of government, except those which have been expressly extinguished or which are inconsistent with overriding national interests. Tribes, therefore, possess the right to form their own government; to make and enforce laws, both civil and criminal; to tax; to establish membership; to license and regulate activities; to zone; and to exclude persons from tribal territories, among others. Limitations on tribal powers of self-government are few, and include the same limitations applicable to states. Tribes, like states, for example, lack the power to make war, engage in foreign relations, or coin money.

C. What is the relationship between Tribal and State Governments?

Because the Constitution vests authority over Indian Affairs in the Federal Government, states, generally, have no authority over tribal governments. Tribal governments are not subordinate to state governments, and usually have the right to enact and enforce stricter or more lenient laws and regulations than those of the neighboring state(s). Although tribes possess both the right and the power to regulate activities in their territories independently from the surrounding state government(s), they frequently collaborate and cooperate with states through compacts or other agreements. The Tribal to State relationship is also one of government-to-government.

II. Implementing the Government-to-Government Relationship

As indicated above, each bureau and agency is required to develop action plans to implement the principles set out in the President's directive. At a minimum, these plans should contain the following:

A. Provide Employee Education

