

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: Indian Policy (9)
Box: 8

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>



**NATIONAL
CONGRESS
OF
AMERICAN
INDIANS**

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

July 28, 1982

EXECUTIVE DIRECTOR

Ronald P. Andrade
Luiseno-Diegueno

EXECUTIVE COMMITTEE

PRESIDENT

Joe De La Cruz
Quinault

FIRST VICE-PRESIDENT

Ralph Eluska
Aleut

RECORDING SECRETARY

Ella Mae Horse
Cherokee

TREASURER

Hollis D. Stabler, Jr.
Omaha

AREA VICE PRESIDENTS

ABERDEEN AREA

Robert Chasing Hawk
Cheyenne River Sioux

ALBUQUERQUE AREA

Guy Pinnecoose, Jr.
Southern Ute

ANADARKO AREA

Newton Lamar
Wichita

BILLINGS AREA

E.W. (Bill) Morigeau
Salish-Kootenai

JUNEAU AREA

Clifford A. Black
Eskimo

MINNEAPOLIS AREA

Gordon Thayer
Lac Courte Oreilles/Ojibway

MUSKOGEE AREA

Perry Wheeler
Cherokee

NORTHEASTERN AREA

Elmer John
Seneca

PHOENIX AREA

Anthony Drennan
Colorado River Indian Tribes

PORTLAND AREA

Russell Jim
Yakima

SACRAMENTO AREA

Juanita Dixon
Luiseno

SOUTHEASTERN AREA


Eddie Tullis
Poarch Band of Creeks

Mr. William Barr
Deputy Assistant Director
for Legal Policy
The White House
Room 235
Old Executive Office Building
Washington, D. C. 20500

Dear Mr. Barr:

Enclosed you will find the materials on Indirect Cost/Contract Support, Timber Fee Administrative Deductions, and Economic Development. There are a few other concerns I believe we should discuss. Please contact me at your earliest convenience.

Sincerely,


David Dunbar
General Counsel

Enclosures

DD:rrs

*file Indian
Policy*

AMERICAN INDIAN
NATIONAL REPUBLICAN FEDERATION

The Honorable George Bush
Vice President of the United States
The White House
Washington, D. C. 20500

August 9, 1982

Dear Mr. Vice President:

I am writing to request an appointment with you to present the input of the American Indian National Republican Federation to the Administration American Indian policy statement currently being reviewed by the policy review commission.

In March 1982 Mr. Louis Bruce, Vice-President, Ms. Jeanne Wasile, Secretary, and I, all of AINRF, met with Mr. John McLaughry, Senior Policy Advisor, regarding an American Indian policy statement. He encouraged us to proceed and he was to speak with you on the matter prior to his departure from the White House.

At the annual meeting of the National Republican Heritage Group Council in Bal Harbour, Florida, the enclosed resolution was adopted endorsing the efforts of AINRF in their development of an American Indian policy statement.


The only Administration American Indian Policy Statement was issued during the administration of President Nixon. He is still recognized by Indian people as the only President in recent history to acknowledge the plight of the American Indian and to attempt to address those problems.

We, the officers and members of the AINRF, feel that it is incumbent on us to assist in whatever way we can to produce and publish an American Indian Policy Statement. We feel this is especially important before the November elections to demonstrate to potential Indian voters the concern of this Administration for the future of Native Americans.

Mr. Frank Stella, Chairman of the NRHGC, will accompany me to present our statement to you. I have met with Mr. Bill Barr, Deputy Director for Legal Policy, Mr. Morton Blackwell, Special Assistant to the President, and Ms. LoAnn Wagner, Assistant to Assistant Secretary of Interior Mr. Kenneth Smith. They are aware of our efforts and our plans to present our statement to you.

We would appreciate an appointment of 15-20 minutes for this purpose. We would like the appointment as soon as possible, since the first draft is currently being reviewed.

Sincerely,



Ted Bryant
President

Enclosure

HOME ADDRESS

5061 South Beeler
Greenwood Village,
Colorado 80111
Denver, Colorado 80202
(303) 779-1054

OFFICE

Deloitte Haskins & Sells
633 Seventeenth Street
Suite 2600
(303) 534-8153

cc: Mr. Frank Stella
Mr. Steve Postupack
Mr. Bill Barr
Mr. Morton Blackwell
Ms. LoAnn Wagner

A RESOLUTION SUBMITTED FOR ADOPTION BY THE NATIONAL REPUBLICAN
HERITAGE GROUPS COUNCIL ANNUAL MEETING IN BAL HARBOUR, FLORIDA,
JUNE 11-13, 1982, BY THE AMERICAN INDIAN NATIONAL REPUBLICAN
FEDERATION

President Reagan has stated his goals of reducing humiliating welfare dependency and increasing productive development of America's human and natural resources. We embrace these goals as our own, for no other sector of America knows as we do the devastating effects of dependency on the people. No sector of America is more determined that we are to achieve in time the economic self-sufficiency of our homelands.

National Tribal Governments
Conference, May 6, 1981

Although the Indian tribes have courageously accepted the challenge of self-sufficiency in these times of worldwide economic distress, theirs is a struggle out of decades of economic deprivation. The Republican Party must aid the tribes in their goals by encouraging the President to adopt and implement a policy of strong protection of tribal governments and lands, and assistance in the development of their significant human and natural resources.

As the President has consistently advocated, the federal government must relieve those burdens that encumber America's economic progress. The greatest encumbrance to true economic development on the Indian reservations has been the constant peril faced by the tribal governments at the hands of those who would disenfranchise the tribes from their lands and their inherent rights to self-government.

In his campaign position on Indian affairs, President Reagan stated:

Because I believe deeply in the rule of law, I support respect for and adherence to treaties, court decisions, and laws passed by Congress which clearly recognize Indian rights to self-government.

It is the sacred trust of the United States to protect Indian lands and Indian rights; and the federal government should live up to that trust responsibility so that the tribes can progress in the security of knowing that economic self-sufficiency does not portend the alienation of the lands and resources, nor threaten their rights and their governments.

THEREFORE, BE IT RESOLVED that the National Republican Heritage Groups Council supports the loyal American Indian National Republican Federation in its efforts to reflect the needs and desires of America's tribal governments and Indian communities, and urges the President to heed the Federation in the development of national Indian policy;

BE IT FURTHER RESOLVED that the National Republican Heritage Groups Council urges the President to adopt a national policy of strong protection of Indian governmental rights, tribal

NRHGC Resolution
Page three

self-determination, protection of Indian lands and natural
resources, and development of Indian reservation economies.

Respectfully submitted:

A handwritten signature in cursive script, reading "Ted Bryant", is written over a horizontal line.

Ted Bryant, President
American Indian National
Republican Federation

Membership Requirements

Registered Republican

American Indian descent

Support the special sovereign nation relationship between the United States and American Indian tribes and nations

Support the treaties and trust relationship between the United States and American Indian tribes and nations (i.e., government-to-government relationship)

Support the concept of self-determination as enacted in PL 93-638

Support the goal of economic self-sufficiency and social development for Indian tribes and nations

Support the basic philosophy of the Republican Party

Dues: \$15 per year (individual)

1981-82 Officers

PRESIDENT

TED BRYANT
CHOCTAW - CHEROKEE

FIRST VICE-PRESIDENT

LOUIS R. BRUCE
OGLALA SIOUX - MOHAWK

SECOND VICE-PRESIDENT

GRACE GOODEAGLE
QUAPAW - POTAWATOMI

SECRETARY

JEANNE WASILE
BLAKFEET - WYANDOTTE

TREASURER

ANDREW AKINS
PENOBSCOT



American Indian National Republican Federation

National
Republican
Heritage
Groups
Council

The New Beginning

For the first time, American Indians are banding together for the express purpose of taking part in the political process at the national level. In 1981, at the National Convention of the National Republican Heritage Groups Council, the American Indian National Republican Federation (AINRF) was formed. Officers were elected and bylaws established.

AINRF's members provide a consistent Indian voice in Republican Party policy councils. Make your voice heard by joining AINRF today. The original Americans have been silent too long. This is your opportunity to take part in the decision making process that can affect all of our futures, as Indians and as Americans.

AINRF objectives include the development of an administration Indian Policy and the implementation of that policy with the assistance of an "American Indian Advisor". Further, we uphold

- The special sovereign nation relationship between the United States and American Indian tribes and nations;
- The treaties and trust relationship between the United States and American Indian tribes and nations (i.e., government-to-government relationship);
- The concept of self-determination as enacted in Public Law 93-638,
- The goal of economic self-sufficiency and social development for Indian tribes and nations.

Voting Strength

The latest count of the American Indian nations shows almost a million and a half Americans of Indian heritage who would be eligible for AINRF membership. There are concentrations in a handful of states — California, Oklahoma, Arizona, New Mexico, North Carolina, Alaska, Washington, South Dakota, Texas and Michigan — but there are Indians in virtually every American city.

Involvement

AINRF's aim is to help the Indian peoples become involved in the political process. As your involvement increases, politics will be less of a mystery and more of a tool to reach your goals.

AINRF will provide resource people to the National Republican Heritage Groups Council, the Republican National Committee, internships for Indian youth, and outreach to Indian peoples nationally with focus on voter registration and election information, and general assistance and referral to the Indian constituency.

Annual meetings will be held each spring to keep AINRF in tune with the changing needs of the community it represents.

Yes! I'd like to join the American Indian National COP Nationalities Federation
Yes! I'd like to receive the NRHG Publication, COP Nationalities News.

Name: _____

Address: _____

Telephone: _____

Remarks: _____

Tribes: _____

Mail to: Jeanne Wasile, Secretary

American Indian National Republican Federation
NRHG Council
310 First Street, S.E.
P.O. Box 28327
Washington, D.C. 20005

TERRANCE J. BROWN, ASSOCIATES



1331 H ST., N.W.
• SUITE 700
WASHINGTON, D.C. 20005
202-628-8615

RESPONSE TO THE REAGAN ADMINISTRATION'S DRAFT PRESIDENTIAL POLICY STATEMENT ON INDIAN AFFAIRS

Introduction

There are few tribal leaders who would dispute the need for a clearcut statement of federal policy in the area of Indian Affairs. Since the 1950's alone, federally recognized tribes have been subjected to a series of conflicting policies that contributed little to the development and stabilization of tribes as governmental entities. In the 1950's the Eisenhower Administration sought to destroy tribal governments by transferring federal jurisdiction and trust responsibilities to state governments and by tribal termination. The primary accomplishment of this policy was the displacement of Indian people from rural to urban poverty and the dissipation of valuable tribal assets. In the 1960's, some of the consequences of the termination policy were reversed as a result of funding programs initiated as a part of the Johnson Administration's "war on poverty." While these programs did increase the level of services on many reservations, it should be stressed that they served Indian people as a part of the general, low-income population. These anti-poverty programs were unresponsive to the need to define and stabilize tribes as governmental entities. As a consequence, when the Nixon Administration made a commitment to a policy of Indian Self-Determination, a major problem it confronted was to nurture and facilitate the development of tribal capacity to carry out the functions of government inherent in the concept of sovereignty. While the foundations for tribal self-government were laid during that Administration, Indian tribes

entered the 1980's confronted with threats of termination and abrogation of treaties. These threats are traceable to the white backlash created by court decisions favorable to Indians in the areas of treaty rights and trust responsibility. Reluctant to confront the forces of backlash, the Carter Administration approached Indian Affairs with a policy of having no policy.

These trends are summarized in this response to the "Proposed Presidential Policy Statement On Indian Affairs" because they are a factor in how tribes will respond to that policy. It was against the backdrop of policies of the 1950's to the 1970's that tribal leaders shifted their support to this Administration during the 1980 Presidential campaign. Issues critical to Indian tribes had been addressed to the Carter Administration. The response they received was silence. When the same issues were raised with the Reagan campaign, the response was a commitment to tribes in the following areas:¹

- (i) Acknowledgment of tribal sovereignty through government-to-government consultation on critical Indian issues;
- (ii) Increased accountability of government agencies for providing services to Indian people;
- (iii) Restructuring of program guidelines, administration, and services to ensure their responsiveness to the needs and priorities of tribal communities.

Based on these representations and their potential to reverse the adverse consequences of prior Administrations' policies, many tribal leaders supported President Reagan in his candidacy.

The significance of President Reagan's campaign pronouncements did not cease with his election as President. For Indian people, these pronouncements became the yardstick by which his honesty, fairness, and commitment to coordinating federal resources to ensure constructive responses to their problems

would be measured. Viewed in this context, the draft policy statement raised a number of serious questions in the following areas:

- (i) Whether the proposal to shift governmental functions from the federal to the tribal level is merely a pretext for termination of Indian tribes;
- (ii) Whether the definition of trust responsibility vis-a-vis natural resources increases the likelihood that natural resources will be developed and/or exploited in a manner that is detrimental to tribes but insulates the federal government from any potential liability for such detrimental consequences; and
- (iii) Whether the proposal for increasing Indian tribes' responsibilities for capital investment on reservations will also increase tribal liability to private investors thereby resulting in encumbrances on valuable tribal assets.

Ultimately, the success of the Administration's Indian policy will hinge upon its thoroughness and articulateness in addressing each of these areas of concern.

In the following pages, a number of issues are raised that we feel are central to any discussion and development of a final policy statement on Indian Affairs. These issues include tribal sovereignty, federal administration of Indian Affairs, and the interrelationship of tribal and other governments. While this is by no means a comprehensive list, it provides a starting point for developing a cohesive articulate policy to govern federal Indian tribal relations.

(A) Tribal Sovereignty

A great deal of lip service has been paid in recent years to the governmental sovereignty of tribes. At the same time, those elements that must be present to exercise tribal sovereignty, (i.e. legislative, executive, and judicial institutions), have been treated in a manner that is best described as "benign neglect." Federal policy makers and agencies have ignored the reality that governmental sovereignty is a two-part equation. One side of that equation

is the people governed. Through their legislative bodies, (in this instance tribal governments), the people identify and prioritize their needs. Authority is delegated by the people governed to the governing body to create whatever institutions or service mechanisms are necessary to serve their needs and priorities. On the other side of that equation is the government itself. That government is responsible for exercising its authority, as delegated, to raise revenues, provide services and monitor the conduct of individual and institutional behaviour. The scope of that government's authority to act relates back to the people governed.

States and local governments have had over two centuries to perfect this equation. As a consequence, an infrastructure has evolved whereby the state and local citizenry have delegated authority to their governments to expend revenues for the purpose of public transportation; income maintenance; social services such as health, education and elderly care; law and order; environmental protection and employment. These demands for services have translated themselves into a system of statutes authorizing the creation of service institutions and the monitoring of their performance.

As a concomitant of the state or local government's authority to provide service, each has the legal authority to raise revenues to pay for them. In exercising that authority, states and local governments have developed numerous mechanisms for funding public services. By 1973, as the chart on page 5 illustrates², state governments have developed an extensive system of taxation to provide revenues necessary for governmental services and operations. The areas of taxation include sales and gross receipts, individual and corporate income tax, license taxes, and taxes on personal property and death and gift transactions.

Chart 1

Percentage Distribution and Rank* of Major Sources of State Tax Collections, 1922, 1938, 1948, 1968, and 1973

Type of tax	1922	1938	1948	1968	1973
<i>Percentage of total state tax revenue</i>					
Sales and gross receipts	14.1	53.4	59.9	57.6	54.5
General	...	14.3	21.9	28.7	29.1
Selective	14.1	39.2	38.0	28.9	25.5
Motor fuel	1.4	24.8	18.7	14.2	11.8
Alcoholic beverage	...	5.6	6.3	3.1	2.7
Tobacco product	...	1.8	5.0	5.2	4.6
Other	12.8	7.0	8.0	6.4	6.4
Income	10.7	12.2	16.1	24.0	30.9
Individual	4.5	7.0	7.4	17.1	22.9
Corporate	6.1	5.3	8.7	6.9	8.0
License	31.5	16.0	14.5	10.6	8.5
Motor vehicle and operators'	16.1	11.5	8.8	6.8	5.3
Miscellaneous	15.4	4.5	5.7	3.8	3.1
Other	43.7	18.4	9.6	7.7	6.1
Property	36.7	7.8	4.1	2.5	1.9
Death and gift	7.0	4.5	2.7	2.4	2.1
Miscellaneous	...	6.1	2.8	2.8	2.1
<i>Rank in importance as source of state tax revenue</i>					
Property	1	4	8	8	9
Motor vehicle and operators' license	2	3	3	5	5
Death and gift	3	8	9	9	8
Corporate income	4	7	4	4	4
Individual income	5	5	5	2	2
Motor fuel	6	1	2	3	3
General sales	...	2	1	1	1
Alcoholic beverage	...	6	6	7	7
Tobacco product	...	9	7	6	6
Sources: Census Bureau, <i>Historical Statistics of the United States: Colonial Times to 1957</i> (GPO, 1960), pp. 727-28; and Census Bureau, <i>State Government Finances in 1968</i> , pp. 20-22, and in 1973, pp. 19-21. Figures are rounded.					

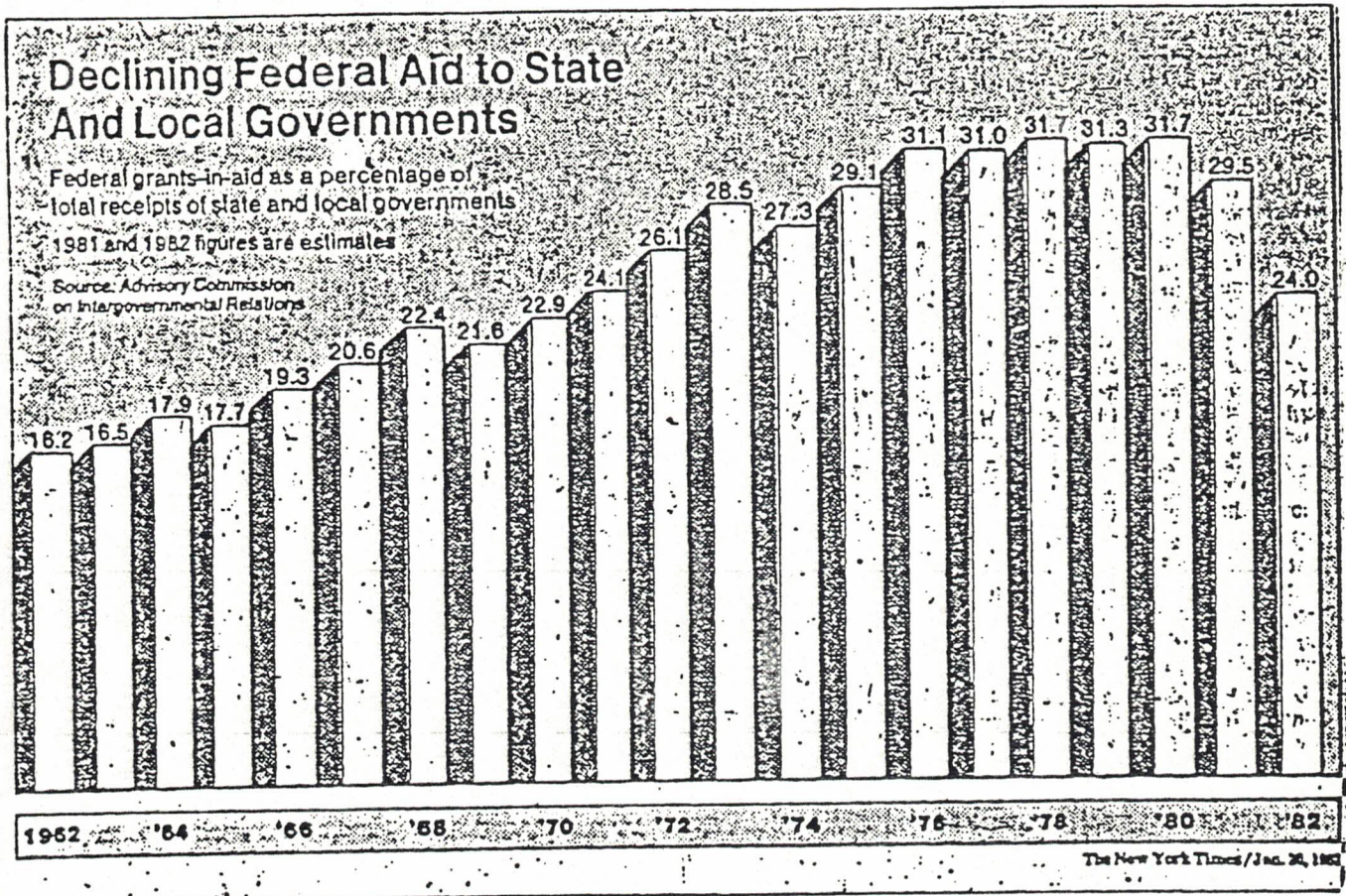
*

(Reprinted from Maxwell and Aronson, *FINANCING STATE AND LOCAL GOVERNMENTS*, Studies of Government Finance, The Brookings Institution: Washington, D.C., 1977 at p.42).

Despite the resources at their disposal to raise revenues, despite the breadth of their legal authority, it should be emphasized that neither state nor local governments have been financially autonomous. As Maxwell and Aronson noted in their study entitled Financing State and Local Governments, "...For many decades neither the state nor local governments have depended wholly on revenue derived from their own sources. Annual intergovernmental transfers have been made, principally through grants-in-aid."³ Stated in more concrete terms, according to the Advisory Commission on Intergovernmental Relations (ACIR), in 1980 an estimated 31.7% of the total receipts of state and local governments came from federal grants-in-aid.⁴ (See Chart 2, page 7).

There is an inherent assumption made by federal legislators and program administrators that governmental sovereignty of state and local governments and that of tribal governments are synonymous. That assumption is both inaccurate and antagonistic to tribal interests for the following reasons. First, the governmental equation is distorted in the instance of tribes. While Indian people define and prioritize their needs for tribal governments, those governments lack the authority to act upon those needs in the same manner as states. For example, prior to implementation tribal constitutions and by-laws must be approved by the Bureau of Indian Affairs. It is not unusual for a tribe to wait several years from the time it submits its proposed constitution and by-laws to receive approval. Similarly, state legislatures have the authority to define the requirements of state citizenship. On the other hand, enrollment as a member of a tribe often does not rest with tribal government. It is subject to approval by the Bureau of Indian Affairs. In short, the capacity of tribal governments is dependent upon current federal Indian policy rather than the authority delegated to tribal councils by the people they govern.

Declining Federal Aid to State And Local Governments*



*

(Source: Advisory Commission on Intergovernmental Relations, as reprinted in the January 20, 1982 NEW YORK TIMES).

The interjection of the federal government into the two-part equation described earlier characterizing state governments also impacts upon how tribal governments deliver services to tribal members. The decision-making process for meeting the needs of tribal members is focussed on the federal agency rather than the tribal level. Members of tribes identify community needs and prioritize them. However, that is where any resemblance to state and local governments ends. While states and local governments are able to raise up to 70% of the revenues required to provide services, Indian tribes depend almost totally upon federal dollars. As a result, the services programmed into tribal communities are determined by factors other than local needs. Thus, despite the crisis that exists in housing on Indian reservations, a policy determination of the federal level that low-income housing is no longer a federal priority will preclude tribes' meeting their members' housing needs. Similarly, with the cutbacks in CETA funding tribes have lost job slots and funds for tribal administration of critical services. The tribal need conflicted with federal program administration priorities and those priorities ultimately determined the outcome. These examples are not isolated instances, they are part of a pattern. With the shift in policy of this Administration towards the "new federalism", Indian tribes lost critical funding resources in service areas essential to the well-being of tribal members.⁵

As a corollary of this distortion in the governmental sovereignty equation as applied to tribes, the institutional infrastructure has not been allowed to develop adequately at a tribal level. Tribal governments are dependent upon federal funds for their staff. Tribal courts are often the creation of the Bureau of Indian Affairs, (CFR Courts), and staffed by Bureau employees. Thus, a critical institution -- the judicial branch of government -- is accountable to a federal bureaucracy rather than Indian people. At the federal agency level,

funding has either not been allocated or has not been requested for the purpose of developing tribal courts and tribal codes. In the areas of consumer affairs and child welfare alone, tribal courts have been confronted with an increasing number of cases. In many instances there is no legal framework for the tribal courts to rely upon in adjudicating such cases.

A dependency has been created by past federal policies upon federal institutions for essential tribal services. Health services for Indian people are a function of HHS (Health and Human Services) Indian Health Service. Housing has been a function of the Bureau of Indian Affairs and the Department of Housing and Urban Development. Education for Indian children, with some exceptions, is carried out by state and BIA institutions rather than tribally controlled schools. Roads on Indian reservations are financed through BIA and the Department of Transportation. General assistance for low income Indian families is provided by either the Bureau or HHS's welfare programs. And finally, the primary sources of employment opportunities on Indian reservations are predominantly federal agencies and programs.

One cannot realistically frame a constructive Indian policy without acknowledging these patterns. It is both expensive and time consuming to develop the infrastructure, staff it, and operate it. The level of poverty at the tribal community level has necessitated the federal government playing a dominant role in designing, staffing, and carrying out such services. What is disturbing about the proposed draft policy statement is that it glosses over these realities. If there were a diminished federal role, there would be few or no institutions in many Indian communities to provide essential services. Moreover, given the level of economic poverty within many tribes, neither the manpower nor the funding resources would exist to replace that federal service network.

Any shift in federal funding for Indian tribes from a dominant to a supplemental role must carefully consider the demographic circumstances of tribes. For example, there are few tribes that have 100,000 or more members. Many tribes have 2,000 to 5,000 members. The rural isolation of these tribes from existing service network systems, combined with their small number of members, makes providing services a more costly endeavor. Similarly, all tribes that are eligible for federal recognition are not rich in coal, timber, or energy resources. Their reservations do not contain resources that can be taxed to create a stable revenue base for tribal operations. The lack of employment opportunities on the reservation has deterred educated Indians with skills vital to their tribes' economic development from returning to the reservation to work. These realities must be confronted and addressed before implementing any policy that imposes a requirement upon tribes to provide an increasing percentage of their own funds for services and programs.

(B) Federal Administration of Indian Affairs

The critical issue confronting tribes, which the draft policy does not address is that tribal assumption of programs and services is not simply a matter of will power; it is a matter of resources. The policy draft implies that tribes have been dilatory in assuming their fair share of the governmental burden. This flies in the face of objective fact. More specifically, the Bureau of Indian Affairs has consistently resisted and delayed tribes in contracting for services pursuant to the Indian Self-Determination and Education Act of 1975, (Public Law No. 93-638). Little or no technical assistance has been provided to tribes regarding implementation of the Indian Civil Rights Act of 1968, even in the wake of the Supreme Court's decision in Martinez v Santa Clara Pueblo. There is no one division within the Bureau of Indian Affairs qualified or responsible for providing technical assistance to tribes in developing tribal tax

policies. The track record of the Bureau of Indian Affairs and the Indian Health Service in implementing Indian preference for positions above the clerical level has been inadequate. Moreover, when tribes have attempted to challenge the negotiation of mineral leases by the Department of Interior which they alleged were unfavorable to the tribe, as the Northern Cheyennes did in the 1970's, their concerns have been disregarded. Similarly, tribal objections to economic development projects that were disruptive to tribal life have been brushed aside.

In order for tribes to attain the degree of economic self-sufficiency contemplated by this draft policy statement, certain conditions must exist on reservations. These include but are not limited to (i) an available skilled labor pool; (ii) reliable information-technical assistance resources on issues such as taxation, financing economic ventures, contracting and leasehold interests; (iii) a service-support system to attract venture capital; (iv) a revenue base to subsidize the cost of providing and maintaining services; and (v) an accessible money supply to finance ventures at low interest rates and/or preferential credit terms.

The resources that exist on reservations at the present time are inadequate to sustain economic development. The primary source of employment for Indians on their reservations is Bureau services, federal grants and contracts, or tribal government. Each of these sources of employment has diminished as a result of the Reagan Administration's economic policies. To be specific, with the Bureau realignment and reorganization many Indian employees will be RIFed as their jobs are eliminated. The reductions in force will come at a point in time when sources of economic development, educational and health service funds have been reduced by block grant funding or eliminated altogether. That shifts the burden to tribal governments to provide increased employment opportunities for Indian

workers displaced by the budget cuts. Since most tribal governments rely heavily upon CETA funds to employ their staffs, with the severe cuts in CETA funding many tribes are not even able to maintain their present workforce level.

As a consequence of these economic policies, tribes are hurt in several ways. First, unemployment on Indian reservations is excessively high. In testimony presented to the Congress on July 19, 1982 Mr. Joseph De La Cruz, President of the Quinault Nation and President of the National Congress of American Indians noted that BIA figures indicated unemployment on reservations was averaging 31% to 46% nationally. Some reservations, he indicated, were experiencing 60% to 70% unemployment.⁶ (Unemployment on the Rosebud Sioux Reservation is now at 83% according to a recent article in the NIHB Health Reporter.⁷)

A practical response to such high levels of unemployment would be retraining of unemployed adults through CETA, continuing education and vocational technical training programs. However, these are no longer viable options for most reservation communities as a result of current budget proposals by the Administration. More specifically, the following budget cuts have been proposed which will inhibit or eliminate tribal capacity to upgrade members' skills or retrain the unemployed for new vocational areas where there may be increased employment opportunities. (These budget cuts have not been adjusted to reflect a 9 % inflation factor.)

Item: Adult Education Component of Indian Education

FY '82 funding level: \$4,695,000
FY '83 funding level: \$4,008,000

Reduction in funding: 14.6%

Item: Post Secondary Component of BIA operated post secondary schools

FY '82 funding level: \$8,170,000

FY '83 funding level: \$6,381,000

Reduction in funding: 21.9%

Item: Comprehensive Employment and Training Title III

FY '81 funding level: \$152,800,000

FY '82 funding level: \$ 89,300,000

Reduction in funding: 41%

These reductions in funding levels for adult education and training are in addition to the elimination of Title IID and VI of CEIA from which tribes also received funding and the proposed elimination of service institutions such as the Southwest Indian Polytechnic Institute which provided vocational training to Indians in the Southwest and elsewhere.⁸

In the absence of employment and training opportunities on the reservation, tribal members are forced to relocate in urban areas. Those who are unskilled and therefore hard to place in jobs place additional demands on the already strained, state administered systems of low income housing, public assistance, and medical care. (Health care has historically been provided to urban Indians through Indian Health Service. However, the Administration's FY '83 budget proposal eliminates Indian Health service for urban centers. This burden will therefore shift to other federal and state funded "medically needy" programs.) Even those with post secondary degrees and experience in white collar jobs will be forced to rely on public benefits because they relocate in urban centers such as Phoenix, Los Angeles, and Chicago where language, cultural background, and racial barriers inhibit employment opportunities for Indian people.

Often referred to as the "brain drain," this outflow of manpower resources diminishes the capacity of tribes to attract light industry onto the reservation. In the absence of a trained and/or trainable labor pool an industry must shoulder the additional cost of importing its workforce in order to establish a reservation-based facility. This substantially increases its start-up costs. When coupled with the fact that other basic services such as health care, road maintenance, banking, housing, and sewage are not available either, there is no incentive for private sector businesses to invest in the reservation economy.

To fail to acknowledge the significance of each of the factors described above in a policy that seeks to shift the burden of government to tribes is, at its best, short sighted. For, it ignores the incapacity of tribes to raise revenues to finance governmental services and benefits. Clearly, in an economy where almost 83% of the able-bodied adults are unemployed, income tax is not a viable source of income. In an economy, where the average per capita income is \$3,000 per year, a regressive tax such as the sales tax is neither practical nor viable. In an economy where services and institutions are not in place and functional, corporate income tax is a deterrent to economic development. Industries will require tax incentives and other benefits to offset added costs of establishing a reservation-based facility. In short, while tribes may have the potential to assume increased governmental roles, they presently lack the financial and administrative capacity. Current government policies and programs are not likely to develop their capacity.

The question must ultimately be asked whether this draft policy statement is a sincere effort to stabilize tribal governments and remove barriers to tribal autonomy or a pretext for giving the federal trust responsibility its narrowest possible legal construction. If the intent is the former, then this

policy statement cannot avoid the difficult economic realities confronting Indian tribes. For example, it must recognize that before tribal governments can experience any economic autonomy they must get out from under the diminution of tribal resources by the burden of poverty. At present, the reservation economy is inadequate to support tribal members' basic living needs:

- In FY '82, on the seventy reservations participating in the Commodity Food Distribution Program between 82,000 and 91,000 needy Indian families were served each month between October, 1981 and June, 1982.⁹
- In FY '82 social services in the Bureau of Indian Affairs carried an average monthly caseload of 57,750 persons. It is estimated that caseload will increase to 63,932 persons in FY '83.¹⁰
- In 1980 witnesses for the Department of Interior testified before the Senate Select Committee on Indian Affairs that at least \$15,000,000 would be required to adequately fund the Indian Child Welfare Act of 1978 (Public Law No. 95-608). This Act established a program for the care of Indian children who are abandoned, neglected, or handicapped.¹¹

It is costly to tribes to remediate these symptoms of poverty. While they have no choice but to do so, funding critical social services siphons off already limited funds and staff resources away from those activities that will enhance the tribe's economic base and revenue flow. Clearly, providing food assistance, general relief funds, and child welfare assistance does not create taxable income to meet the minimum requirements of survival in a stagnant economy. This locks tribes into a mode of operation that precludes using existing resources to extend the reservation economic base and thereby decrease dependence on federal funding.

The severity of this problem is best illustrated by the tribal law enforcement program. In a contract study of law enforcement on Indian reservations conducted on or about 1977, eighty-eight reservations submitted plans dealing with law enforcement problems and programs to deal with them. The tribes were required to develop funding estimates for their programs and identify potential

sources of funding to implement the programs. It is significant to note that the participating tribes anticipated the tribes' capacity to fund these programs to be 12% of total funding. Approximately 83% was to be provided by federal sources, (43% from BIA programs; 6% from CETA; 24% from Economic Development Administration; 9% from Law Enforcement Administration Assistance; and 0.6% from Revenue Sharing) and 5% was to come from "Other" sources.¹²

This reliance on federal resources characterizes tribal enterprises as well as tribal services. A recent analysis of the impact of CETA cuts on Indian workers and communities underscores the crucial role of federal funds in the tribal economy. Among the examples cited by this analysis are Papago Farms, a tribal enterprise which meets 25% of its manpower needs through CETA/Public Services Employment. Similarly, Papago Livestock Center -- the only livestock center on the reservation -- has 40% of its labor force provided by CETA. Termination of PSE will force the Center to cut back on services it presently provides, such as maintaining livestock pens and feed and providing veterinary services to tribal ranchers.¹³

These realities can only lead one to the following conclusion. The natural resources that presently exist on Indian reservations are insufficient to finance the cost of providing governmental services to tribal members at an adequate level. Indian tribes can achieve economic sovereignty only if the federal government initiates a policy that maximizes coordination of existing federal resources, implements funding mechanisms that are more responsive to the needs of tribal governments, and creates incentives for private sector development of reservation-based enterprises and investment in tribally-owned businesses.

When measured against these prerequisites, the draft policy statement is seriously lacking. While it emphasizes that tribes must reduce their dependence upon federal funding, it makes no long-term commitments and offers no strategies to enable tribal governments to assume increased financial responsibility. While it imposes as a condition precedent to full acknowledgment of tribal sovereignty (i) tribal responsibility for an orderly transfer of functions from the federal to the tribal level; (ii) tribal accountability for use of federal funds; and (iii) tribal liability for effectuation of laws and regulations consistent with the Indian Civil Rights Act of 1968, it makes no commitment of resources or technical assistance in meeting those conditions.

In return for shouldering this burden, the policy statement proposes to grant tribal governments what they already have by law and judicial decision: the status of sovereign governments. It proposes to reward tribes with simpler procedures for funding and operating federal programs to deliver services to tribal members by reducing funding levels and substituting funding structures such as set-a-sides under state block grants -- both of which are clearly disadvantageous to tribes. (Set-a-sides to Indian tribes under the Community Services Block Grant ranged from a low of \$915 to a high of \$164,505 in FY '82.¹⁴ Funding levels for most tribes were inadequate to operate a service project for a year). It also proposes to carry out its trust responsibility to protect tribal water resources subject to the proviso that it ascertain the value of the resource for which the water is being claimed.

(C) Interrelationship of Tribal and Other Governments

An obvious consequence of this policy statement is that it redefines the relationship between tribal and other governments. With regard to the federal government, it defines a passive role in providing services to tribes and

protecting tribal assets. The federal government will supplement the funding of services. The responsibility will be shifted to tribes to aggressively seek out and create a revenue flow on the reservation to underwrite the cost of services to tribal members. The federal government will quantify and selectively protect tribal resources. The burden will shift to tribes to assess their own natural resource potential, ensure that tribal transactions are entered into at arm's length negotiations, and create investment incentives using tribal assets to attract business ventures onto the reservations.

By relegating the federal government to a passive, supplemental role in Indian Affairs this policy statement leaves many issues critical to tribal economic development unresolved. For example, as tribal governments emerge as state-like governments, are they to be treated as states for the purpose of national environmental protection and labor relations statutes? As the responsibility of tribal governments increases, will they be accorded increased jurisdiction in criminal and civil matters over Indian and non-Indian people within the reservation's boundaries? As the federal role in tribal government diminishes and tribal investment in capital ventures increases, what will be the scope of tribal liability in such joint-ventures? Will "sharing the risk" open the door to encumbrance of tribal assets by private sector investors? Will tribes enjoy the full range of revenue-raising powers presently enjoyed by states such as taxation and issuance of bonds? How is the balance to be struck between the authority of tribes and the governments of the states in which their reservations are located with regard to taxation of reservation-based corporate activity? Will the emergence of tribes as state-like governments compel states to extend the principle of comity to tribal laws?

In the past, tribal independence from state interference has been a direct function of the federal government's actively asserting that authority to act in Indian Affairs was reserved by constitution and statute to the federal level of government. The federal presence did not always deter states from interfering in tribal matters such as the welfare of Indian children. However, it did minimize the incidence of such encroachments upon tribal authority. In defining a passive role for the federal government in tribal affairs, this policy draft appears to encourage states to improperly assume jurisdiction over tribes without fear of redress. Should this occur as a consequence of the diminished federal role in Indian Affairs, we can expect that tribal governments will not stabilize their authority and thrive economically. To the extent that state jurisdiction over tribes is unchecked, it will result in the erosion of tribal authority and the appropriation of tribal assets. Thus, the question of the interrelationship of tribal and other governments cannot be left to chance. It must be acknowledged by any policy statement promulgated by this Administration.

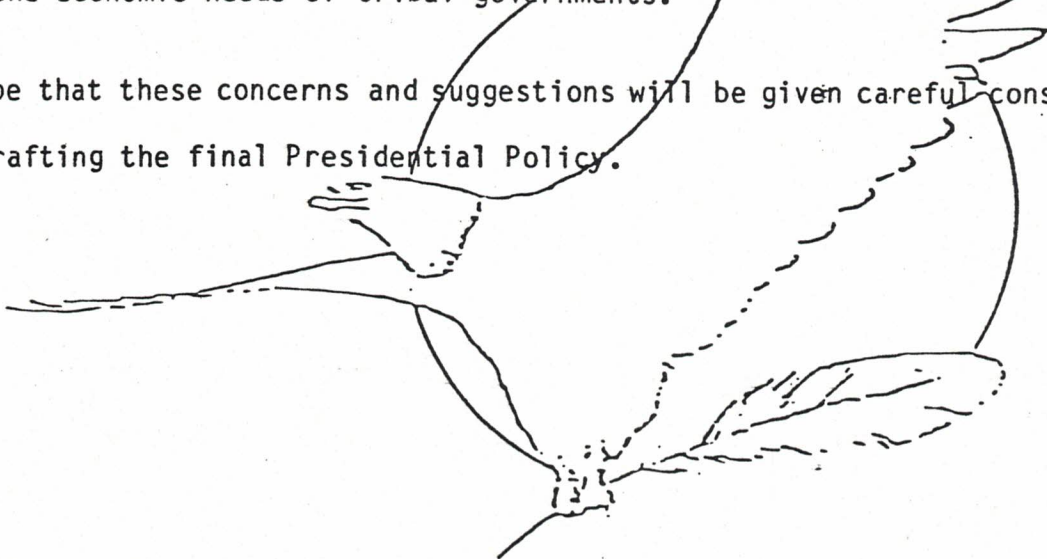
Conclusion

It is not the intent of this analysis of the draft Presidential Policy Statement on Indian Affairs to dissuade the Executive Branch from formulating an Indian policy. Rather, it is the purpose of this analysis to encourage the development of a policy statement that is consistent with the campaign commitments of this Administration to Indian people.

The present economic climate demands that creative, innovative solutions be designed to address the economic problems of tribes. The options available to this Administration are countless. They encompass both administrative and legislative strategies such as,

- (i) The issuance of an Executive Order on Indian Affairs establishing an interagency council of cabinet officials to formulate government-wide guidelines on tribal funding. At a minimum, these guidelines could require data collection and sharing on tribal needs, interagency coordination in planning and funding of tribal grants, and uniform standards for grant application and administration by tribes.
- (ii) The establishment of a private sector advisory group to assess barriers to reservation economic development. This advisory panel could recommend strategies for attracting capital investments onto the reservation, assess the viability of the Indian Financing Act and related legislation, design parameters for a system of taxation for implementation by tribes to increase their capacity to raise revenues, identify technical assistance resources to be utilized by tribes in such technical areas as financing tribal enterprises, risk management in financial ventures, and exploitation of tribal natural resources.
- (iii) The drafting of enterprise zone legislation specifically adapted to the economic needs of tribal governments.

We hope that these concerns and suggestions will be given careful consideration in drafting the final Presidential Policy.



Statement on Indian Affairs

Footnotes

1 Statement by the Honorable Ronald Reagan, The American Indian and Alaskan Native Leadership Meeting. Sioux Falls, South Dakota. October 14, 1980.

2 James A. Maxwell and J. Richard Aronson, Financing State and Local Governments (Washington, D.C., 1977), p. 42.

3 Ibid., p. 45.

4 Advisory Commission on Intergovernmental Relations, "Declining Aid to State and Local Governments" Reprinted in The New York Times, January 20, 1982.

5 See the May 5, 1982 report of the Senate Select Subcommittee on Indian Affairs to the Senate Committee on the Budget.

6 Testimony of Mr. Joseph De La Cruz regarding S. 1298 before the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance. July 19, 1982.

7 Jack Anderson "Hospital Funds Go to Pay Bureaucrats," WIHB Health Reporter, Vol. 3, No. 2 (May/June, 1982), 4.

8 "Report of the Senate Select Subcommittee on Indian Affairs to the Senate Committee on the Budget", May 5, 1982, pp. 11-12.

9 USDA: Food and Nutrition Service Data on Needy Family Program Participation on Indian Reservations for October, 1981 to June, 1982.

10 "Report of the Senate Select Subcommittee on Indian Affairs," p. 20.

11 Ibid., p. 22.

12 "Preliminary Analysis of Guidebook II", Reservation Law Enforcement Improvement Plan: Bureau of Indian Affairs, Division of Law Enforcement Services (Nov., 1977), p. 14.

13 "Impact of CETA Budget Cuts on Indian Workers and Communities", p. 6.

14 "Community Services Block Grant Allotments for States: Fiscal 1982", chart compiled by the Office of Community Services: Department of Health and Human Services.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

August 26, 1982

MEMORANDUM TO: BOB CARLESON

FROM: KEN CLARKSON
FRED KHEDOURI

SUBJECT: OMB Comments on the Draft Indian Policy Statement and Recommended Administration Initiatives

In general we feel that the draft Indian Policy Statement is consistent with previous Presidential positions. There are, however, certain points with which we take issue or have concerns that we would like to bring to your attention.

Revised Introduction

In a revision to the introduction (on page 2, paragraph 4), language was added concerning the federal trust responsibility. The objective of the revision is to clearly limit the definition of trust responsibility to a fiduciary one for Indian assets. Although we agree with this type of definition, we have the following problems with the paragraph:

- It is not appropriate to mention specific examples of resources for which the Federal government has a trust responsibility (i.e., the land, water, minerals and funds) in a Presidential statement. Presently there is no agreement within the Administration (among DOJ, OMB, DOI, etc.) regarding: (1) the exact nature of the fiduciary responsibility; and (2) which resources this responsibility applies to. The examples of land, water, minerals and funds should therefore be dropped and the sentence restructured to read ". . . fulfill the Federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members."
- The mention of fulfilling the trust responsibility ". . . in accordance with the highest fiduciary standards" is very problematic. The word fiduciary should be dropped. There are clear legal definitions of fiduciary standards and the U.S. Government could be liable under these for any losses that Indians incur related to the development of their resources or our handling of their assets.

We have attached a marked up copy of the revised introduction.

Direct Funding to Indian Tribes under the Title XX Social Services Block Grant

There are a number of policy issues implicit in this proposal which we do not think have been adequately addressed. Until decisions are made regarding the handling of these sub-issues, we think it would be premature to include this initiative in the President's statement.

- Would direct funding of Indian tribes contribute to improving services to them? Direct funding may actually result in fewer resources for social services to Indians. SSBG funds are distributed on a population basis, which would give tribes less than if need factors were taken into account. Funding tribes through states allows states to recognize the relatively greater need of Indians for services. If tribes are directly funded, states would have more reason to ignore tribal needs completely, leaving tribes with their own small, population-based allotments. Directly funding Indian tribes would divert scarce resources away from services which are particularly needed by Indians and toward administrative overhead necessary to run the block grant. Rather than funding 54 jurisdictions, the block grant could fund as many as 559 (by adding 282 Federally recognized tribes and 223 Alaska Native villages). Since most of the tribes are very small (only 25 of the 505 have more than 5,000 members), HHS could have to make many small grant awards, just as it did under the old categorical programs. Direct funding to tribes would fragment and duplicate the administrative structures that the block grant was meant to streamline. With many more grantees to deal with, much of the reduction in Federal staffing and overhead accomplished by the block grants would evaporate.
- What would a state's residual responsibility be toward Indians in those states where tribes are receiving direct funding? It is not clear under this proposal whether states could refuse to provide services under other means-tested programs (e.g., foster care) to Indians, by arguing that the tribes have SSBG funds for those purposes.
- Would extending the SSBG directly to tribes put pressure on the system to provide other Social Security Act programs directly to tribes? Directly funding tribes under the SSBG departs from the current principle that only tribes that were funded in the categorical programs being folded into the block grants are eligible for direct funding. Opening up Title XX would not be in accord with this principle. If this policy is to be revised, new criteria should be developed for deciding under which programs Indians should be eligible for direct funding. To our knowledge there are

presently no new criteria. SSBG would be only the second Social Security Act program that funds tribes directly. (The first is Child Welfare Services in which no tribe currently has the capacity to participate because they are not yet able to meet Federal program regulations.) Opening up SSBG to tribes may pave the way for tribal requests for direct funding under the large Social Security Act entitlements (such as AFDC, Medicaid, and Unemployment Insurance) which tribes do not presently have the capacity to administer.

- Do most tribes currently have the administrative capabilities to administer these block grants? In many cases, tribes have not developed the infrastructures necessary to administer social service programs. They lack these capabilities in areas where they have had the legal authority to run programs (child welfare services) as well as in a whole host of new areas (child abuse, rehabilitation). Pumping over \$2 billion into a system without the capacity to handle it may result in a less-than-optimal use of resources and in reduced quality of services to a variety of vulnerable populations.
- What types of tribes would be eligible for direct funding? The types of tribal entities eligible for Federal programs vary among the various Federal agencies. BIA uses a relatively narrow definition and funds only Federally recognized tribes and their members who live on or near reservations, in Alaska Native Villages, or on former reservation land in Oklahoma. Agencies such as the Administration for Native Americans (ANA) use much broader definitions of eligible Indians that include state recognized tribes, urban Indian groups and Native Hawaiians. The narrower BIA definition in itself would open this program up to an additional 505 new jurisdictions (282 tribes in the lower 48 states and 223 Alaska Native Villages), while a broader definition could open it up even further. If it is decided to fund tribes directly, OMB recommends that the narrower BIA definition be used to determine eligible tribal entities.

Replace Concurrent Resolution 108 with a New Resolution in Support of Tribal Self-Government.

Although OMB has no objection to this proposal, we feel that it could pose protocol problems as Concurrent Resolutions are solely the domain of Congress and an Administration recommendation to pass a new one may be viewed as unnecessary meddling by the Executive Branch in congressional affairs.

ACIR Membership for Indian Tribes

We feel that ACIR membership for Indian tribes is inappropriate at the present time. It would dilute the work of the ACIR and involve them in a number of problems which are not

intergovernmental in the usual Federal sense, but which are intergovernmental because of the special relationship between Indian tribes and the Federal Government. Most ACIR members apparently do not want Indian tribal governments represented on the membership. Indian tribes vary considerably in their size and the extent to which they carry out governmental functions. It seems premature to include them until tribes are really functioning like governments, with considerably less BIA operation of their governmental programs.

Because some issues discussed within ACIR may have implications for reservations, it may be useful to have an Indian member as an official non-voting observer to test whether participation would be mutually useful.

Advisory Commission on Development of American Indian Reservation Economies

OMB advises against the formation of this Commission for the following reasons:

- Unless it is very carefully monitored by the White House, the Commission could become "a loose cannon on the deck," coming out with statements or recommendations at odds with or embarrassing to the Administration.
- It is not clear what having the Commission would really achieve, nor why this approach is the best forum from which to get results.
- Its charter is not well focused or drawn narrowly enough to result in a useful output.
- The Federal Government does not appear to be represented, although it would presumably bear the brunt of recommendations for change and action.
- It will most likely result in recommendations for more Federal funding for housing, health, education, job training and economic development.

If it is decided to have this Commission regardless of OMB's concerns, we would recommend that it be tightened up in the following ways:

- The charter be very narrowly focused and specifically direct the Commission to deal with exclusively identified items only.
- The Commission itself have a short and definite life span, at the end of which it is permanently out of business.
- The membership be very carefully selected to ensure willingness to work within both the charter and enunciated Presidential policies and procedures.

INDIAN POLICY STATEMENT

Introduction

This Administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to state and local governments, but also to federally recognized American Indian tribes.

When European colonial powers began to explore and colonize this land, they entered into treaties with sovereign Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this Administration pledges to uphold.

In 1970, the President announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

The principle of self-government set forth in this Act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, federal policies have by and large inhibited the political and economic development of the tribes. Excessive

regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

This Administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economies. Tribal governments, the federal government, and the private sector will all have a role. This Administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the federal government.

This Administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen federal control over tribal governmental affairs. This Administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis, and pursuing the policy of self-government for Indian tribes without threatening termination.

In support of our policy, we shall continue to fulfill the federal trust responsibility for the management of the assets ^{Physical and financial resources} ~~the land, water, minerals and funds~~ we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the ^{highest} ~~the~~ ~~fiduciary~~ standards.

Tribal Self-Government

Tribal governments, like State and local governments, are more aware of the needs and desires of their citizens than is the federal government and should, therefore, have the primary responsibility for meeting those needs. The only effective way for Indian reservations to develop is through tribal governments which are responsive and accountable to their members.