

TRIBAL-STATE RELATIONS IN NEW YORK STATE: PAST AND PRESENT

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I. INTRODUCTION

Over the course of New York's history, the state government has repeatedly tried to develop a functional framework for addressing issues of state policy toward Native American tribes and nations within the state's borders. While these efforts have varied in both duration and efficacy, no central legislative or executive body exists today and state-tribal relations continue to develop through several state agencies. Currently, the bulk of the state's social services for Native Americans are administered by Native American Services in the Office of Children and Family Services (OCFS). In addition, several other agencies provide services and interact with Native American tribes and nations on issues within the agency's primary area of expertise. Two of these agencies have programs aimed specifically at Native Americans, including the Native American Education Unit in the Department of Education and the American Indian Health Program in the Department of Health. Three more, the Department of Transportation, the Division of State Police, and the Racing and Wagering Board, are authorized under state law to regulate certain activities on reservations. Other agencies provide services to Native Americans in conjunction with similar services provided to state residents, provide funding for services and programs administered by tribal governments, and provide education to the public about Native American culture and current issues.

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II. HISTORY

New York State has historically created governmental infrastructure to address issues of Native American policy on an as needed basis. With the exception of a long-standing (although often renamed) office in the social services agency, none of these efforts have endured long enough to establish an ongoing state policy. Thus, the state's Indian Law has developed piece by piece, beginning with a statute in 1802 imposing an elected government on the St. Regis Mohawk tribe. *See* Robert B. Porter, *Legalizing, Decolonizing, and Modernizing New York State's Indian Law*, 63 Alb. L. Rev. 125, 137 (1999). Provisions added during the mid-nineteenth century dictated additional government structures and sought to expand state authority to take protective action against intruders on reservations and to provide social and educational services. *Id.* at 136-38.

Legislative committees on Indian Affairs date back over a century. In 1888, the legislature created a "Special Committee to Investigate the Indian Problem." Laurence M. Hauptman, *Formulating American Indian Policy in New York State, 1970-1986* 10 (1988). The controversial report of this Committee, known as the "Whipple Report," has cast a chill on state relations with the tribes through the present. *Id.* at 134, n.31. In 1900, Governor Roosevelt created a commission to again investigate the "Indian problem." *Id.* at 11. This commission lasted less than a year before the Governor's term ended. *Id.* at 12. The state Constitutional Convention of 1915 had a "Committee on Relations to the Indians," which promoted assimilation of tribes and state jurisdiction over Indians. *Id.* In 1919, yet another committee was formed by the state legislature. *Id.*

at 14. This committee's conclusion in the "Everett Report" that the tribes had been deprived of lands in violation of treaties was generally ignored by the state government.

Id.

In 1944, the state legislature created the Joint Legislative Committee on Indian Affairs. *See* Concurrent Resolutions Creating and Extending Special Joint Legislative Investigating Committees, Legis. Doc. No. 52 (1944). This committee was initially responsible for proposing legislation that would become 25 U.S.C. sections 232 and 233, granting state jurisdiction over criminal and civil matters on Indian reservations. *See* Report of the Joint Legislative Committee on Indian Affairs, Legis. Doc. No. 51 (1945). The Committee later developed a more collaborative approach, conducting meetings with tribal leaders to address problems on the reservations. *See* Report of the New York State Joint Legislative Committee on Indian Affairs, Legis. Doc. No. 38 (1964). There is currently no legislative committee on Native American issues. *See* New York State Assembly, Committees, Commissions and Task Forces, <http://assembly.state.ny.us/comm/> (last visited Mar. 23, 2006).

In the executive branch, the state's social services agency has had the primary role in state-tribal relations since 1924. *See* Office of Children and Family Services, Native American Services, <http://www.ocfs.state.ny.us/main/nas/> (last visited Mar. 16, 2006). The office was originally called the Bureau of Indian Affairs and located in the Department of Social Welfare. *Id.* The Department of Social Welfare then became the Department of Social Services and the Bureau of Indian Affairs was renamed Native American Services. *Id.* In 1998, Native American Services was transferred to the newly created Office of Children and Family Services. *Id.*

While Native American Services had authority over a range of matters, other instances of state-tribal interaction were scattered across state government. In order to address the lack of coordination of state agency action relating to Native Americans, Governor Cuomo created the Office of Indian Relations by Executive Order in 1991. N.Y. Comp. Codes R. & Regs. tit. 9, § 4.147 (1991). The Office was to oversee state policy towards and interactions with the several tribes. *Id.* Governor Cuomo appointed Leigh Hunt, a former Syracuse Police Chief, to be the Director of the Office of Indian Relations shortly after it was created. *Cuomo Fills New Indian Post*, N.Y. Times, Aug. 17, 1991, at B2. Two and a half years later, however, the Governor cut all funding for the Office and distributed its staff among other state agencies. *Leigh Hunt May Trade Indian Job for Prisons*, Post-Standard, Feb. 3, 1994, at A1. Thus, state-tribal relations continue to develop without centralized oversight by the executive branch or the legislature. The following sections describe the current state of state services for and interactions with the Native Americans residing on reservations in New York.

III. AGENCIES WITH NATIVE AMERICAN OFFICES

In New York State, three state agencies have an office or program specifically devoted to services for Native American communities. These include the Office of Children and Family Services, the Department of Education, and the Department of Health.

A. Office of Children and Family Services

Native American Services in the Office of Children and Family Services is the main office for Native American affairs within the Executive branch. *See* New York State Office of Children and Family Services, *A Proud Heritage* (2001). Section 39 of the Social Services Law, N.Y. Soc. Serv. Law § 39 (McKinney 2006), gave the Department of Social Services all duties previously held by other state officials that “relate to the affairs of Indians” except education of children on reservations. *Id.* The OCFS Native American Services took over these obligations when OCFS was formed in 1998. *See Proud Heritage, supra*, at 32; Office of Children and Family Services, Native American Services, <http://www.ocfs.state.ny.us/main/nas/> (last visited Mar. 16, 2006). Its duties include social work, educational counseling, distribution of state annuities, acting as a trustee for Cayuga trust accounts, appointing Onondaga agent and Tonawanda attorney, and running the Tonawanda Indian Community House. *Id.* at 33.²

B. Department of Education

The New York State Department of Education contains a Native American Education Unit. The Unit is located within Elementary, Middle, Secondary and Continuing Education, under School Improvement and Community Services, Regional School Services. State Department of Education, EMSC Offices, <http://www.emsc.nysed.gov/deputy/Documents/emscoffices.html> (last visited Mar. 18, 2006). Pursuant to section 4101 of the Education Law, N.Y. Educ. Law § 4101 (McKinney 2006), the Unit oversees distribution of state funding to public schools

² Under section 39, OCFS also has authority to create agreements with tribes whereby they provide child placement services, reassume jurisdiction over child custody cases, or provide welfare services through grant funding. N.Y. Soc. Serv. Law § 39.

attended by Native American children living on reservations. *See id; see also* State Education Department, Native American Education, <http://www.emsc.nysed.gov/rss/natamer/> (last visited Mar. 16, 2006). The Unit also manages the New York State Indian Aid Program, a scholarship for Native American students from tribes located in New York attending a college or university in New York. *See* N.Y. Educ. Law § 4118 (McKinney’s 2005); Native American Education, *supra*. In addition to the functions of the Unit, the Department provides funding for libraries and reservation schools run by tribal governments. *Proud Heritage, supra*, at 37.

C. Department of Health

The Department of Health provides health services to Native Americans through the American Indian Health Program, which is located under Oral Health Programs even though “primary medical care” and “preventative health services” are provided along with dental care. *See* Department of Health, DOH Oral Health Programs in New York State, American Indian Health Program, <http://health.state.ny.us/prevention/dental/amerind.htm> (last visited Mar. 18, 2006). Public Health Law section 201, N.Y. Pub. Health Law § 201(s)(1) (McKinney 2006), requires the Department to administer to the health care needs of Native Americans on reservations. To meet this obligation, the American Indian Health Program establishes contracts between the state and local hospitals and health centers to provide care for Native Americans residing on the reservations. Department of Health, *supra*. The Department also provides funding and staff for reservation clinics. *See Proud Heritage, supra*, at 34-35.

IV. REGULATORY AGENCIES

Three state agencies have regulatory authority over activities taking place on reservations, either in conjunction with services provided or by agreement with the regulated tribe. These include the Department of Transportation, the Division of State Police, and the Racing and Wagering Board.

D. Department of Transportation

Under section 53 of the Highway Law, the Department of Transportation oversees construction, maintenance, and repair of state highways on reservations within New York. *See* N.Y. High. Law § 53 (McKinney 2006); N.Y. Indian Law § 12 (McKinney 2006); *see also Proud Heritage, supra*, at 47. Local commissioners must notify the tribe of intended repairs and must obtain consent of the tribe for new highways. N.Y. Indian Law § 12.³ The Department sets speed limits and traffic regulations for state highways on reservations. N.Y. Veh. & Traf. Law §§ 1620, 1621 (McKinney's 2006); *see also Proud Heritage, supra*, at 47. Finally, the Department can enter into agreements with tribes and local authorities to divide maintenance of highways that are partially on reservations. N.Y. High. Law § 53a.

E. Division of State Police

Under section 114 of the New York Indian Law, N.Y. Indian Law § 114 (McKinney's 2006), the superintendent of state police has specific obligations in relation to the St. Regis Mohawk Police Department. The statute, which went into effect August 23, 2005, gave the St. Regis Mohawk tribal police authority to arrest both Indians and non-Indians for offenses committed on the reservation. N.Y. Indian Law § 114(2); *see*

³ A tribe opposing the improvements to a state highway on a reservation has a right of appeal to the county court. N.Y. Indian Law § 12.

also Press Release, St. Regis Mohawk Tribe, Governor Pataki Signs Tribal Police Bill (Sept. 1, 2005), *available at*

http://www.stregismohawktribe.com/press_releases/pr_090105-2.html. The superintendent of state police is authorized to appoint officers of the tribal police upon recommendation of the tribal council, to conduct character and fitness and criminal records checks on candidates, and to revoke appointments with notification to the officer and tribal council. N.Y. Indian Law § 114(2), (4)-(5), (11).

C. New York State Racing and Wagering Board

The Racing and Wagering Board regulates gambling in casinos on reservations pursuant to Compacts with three tribes: the Oneida, the St. Regis Mohawk, and the Seneca. New York State Racing and Wagering Board, Indian Gaming, Frequently Asked Questions, <http://www.racing.state.ny.us/indian/FAQ.html> (last visited Mar. 23, 2006). Each tribe conducting gambling activities also has its own gaming authority. *Id.*

V. STATE SERVICES FOR NATIVE AMERICANS

Several other state offices provide specific services to Native Americans on reservations in New York though they do not have offices dedicated for this purpose or statutory obligations. These include the Department of Labor, the Office for the Aging, and the Office for Alcohol and Substance Abuse.

A. Department of Labor

The Department of Labor's Division of Employment Services provides job search training and placement services to Native Americans on reservations. *Proud Heritage*, *supra*, at 44. These services are provided to the Cattaraugus Reservation by the Dunkirk,

NY office, to the St. Regis Mohawk Reservation through the Massena, NY office, and to the Onondaga Nation through the Syracuse, NY office. *Id.* at 43-44. The Department also provides placement services for Native American veterans through an American Legion Post on one of the reservations. *Id.* at 44-45. The American Indian Community House is in the process of being certified by the Department to provide job counseling and placement for Native Americans in New York City and on the Long Island reservations. *See id.* at 44; American Indian Community House, Employment and Training Program, <http://www.aich.org/employtrain.html> (last visited Mar. 18, 2006).

B. Office for the Aging

The New York State Office for the Aging has offices for the St. Regis Mohawk Reservation and for the Seneca Nation, in addition to its offices in each county and in New York City. *Proud Heritage, supra*, at 50. The Office provides services to older residents with economic need. *Id.* at 49.

C. Office of Alcoholism and Substance Abuse Services

The Office of Alcoholism and Substance Abuse Services provides a drug abuse clinic and alcohol inpatient rehabilitation on the St. Regis Mohawk Reservation. *Id.* at 50-51. It also provides programs through the Native American Cultural Center and American Indian Community House. *Id.* at 51. Other inpatient and outpatient clinics around the state are available to Native Americans. *Id.* at 50-51.

VI. GRANTS AND FUNDING FOR TRIBES AND INDIVIDUAL NATIVE AMERICANS

Three state agencies also provide grants to individual Native Americans on reservations within New York State, as well as to tribal governments to provide services to members of the tribe.

A. Department of Economic Development

The Department of Economic Development provides funding to Native American businesses on reservations through the Division of Minority and Women's Business Development. *Proud Heritage, supra*, at 38. Businesses with majority ownership by minorities, including Native Americans, or women are eligible for the Division's programs. *Id.* at 39. These include access to loans and grants from the Empire State Development Corporation and access to government contracts and procurement. *See id;* Empire State Development, Minority and Women Owned Businesses, http://www.nylovesbiz.com/Small_and_Growing_Businesses/mwbe.asp (last visited Mar. 18, 2006).

B. Department of State

The Department of State provides Community Services Block Grant funding to four state-recognized tribes that provide services to tribal members. *Proud Heritage, supra*, at 45. The groups that have contracts with the Department are the Poospatuck Indian Nation, the St. Regis Mohawk, the Seneca Nation, and the Shinnecock Indian Reservation. *Id.* at 45-46. The tribes use these funds to provide youth and after school programs, elder services, crisis centers, and utility and housing assistance to members of their respective tribes. *Id.*

C. Division of Housing and Community Renewal

The Division of Housing and Community Renewal provides funding both through tribal agencies and directly to individuals. The Mohawk Housing Corporation obtains funds from the Division's Rural Preservation Program as well as from federal grants administered by the Division. *Id.* at 48-49. General state programs providing housing assistance are available to other Native Americans. *Id.* at 48.

VII. EDUCATION AND AWARENESS

In addition to programs serving Native Americans, the state provides education about Native Americans to its employees and the general public. The State Office of Mental Health provides cultural awareness programs for its employees. *Id.* at 51. The Office of Parks, Recreation, and Historic Preservation operates several facilities with historical significance to Native Americans and conducts programs to educate the public about Native American culture. *Id.* at 53-54. Finally, the State University of New York (SUNY) funds the Center for the Americas and the Indigenous Studies Program at SUNY Buffalo, the SUNY Native American Initiative at SUNY Potsdam, and courses on Native American culture and issues at the other state university campuses. *Id.* at 57-59.

VIII. CONCLUSION

In sum, New York State does not have a centralized agency for state-tribal relations and instead administers a variety of programs through the various state agencies. Native American Services within the Office of Children and Family Services is the nearest entity to a Native American agency, providing several different services and

generally acting as a liaison between the state and tribes. *See Proud Heritage, supra*, at 33. Several other agencies, however, provide significant services to Native Americans in their areas of jurisdiction and expertise.