

SENATE TAXATION COMMITTEE  
MEETING OF APRIL 7, 1977

The meeting was called to order by Chairman Richard Bryan at 2 p.m. The following members were present:

Senators Norman Glaser, Norman Ty Hilbrecht and Richard Bryan.

Senators Carl Dodge and Gary Sheerin were excused. Senator Floyd Lamb was absent.

Testimony was heard on the following bills:

AB 447 Eliminates interest charge on certain deferred taxes against agricultural and open-space property.

Mr. Chuck Wyatt, Executive Vice President of the Nevada Farm Bureau, testified in support of AB 447. He said this bill was brought about to remove the interest penalty on deferred taxation. Agricultural lands in the State of Nevada have always been taxed based on its agricultural value. A provision within the state constitution said all taxation must be equal. At the concern of agricultural interests within the state, a constitutional amendment was passed in the preceding legislature to allow deferential taxation, leaving the incentive for this land to stay in agricultural production. The provision provided for additional tax revenue to the state by recouping the differential between the actual production taxation and based on what the actual sales ratio would be on that property. They also had a provision for six per cent interest because it actually is new wealth to the state. It's not the case where funds are being borrowed from the state. Therefore, the Farm Bureau doesn't feel that six per cent interest should be there.

Senator Bryan stated another piece of legislation is being processed, SB 399, which will dovetail with this bill.

Senator Glaser said the possibility of putting that particular provision in with that other amendment was discussed, but it was decided that too many things may get in one bill. It was intended for these to fly on their own merit.

Senator Bryan asked Mr. Wyatt with whom he talked who supported or opposed the bill.

Mr. Wyatt said the Farm Bureau represents 3800 members. He said he knew of no opposition to the bill.

Senator Glaser stated the other 40 states have gone along this same route. He asked Mr. Wyatt how many states have the six per cent interest provision.

Mr. Wyatt said he knew of none.

Senator Bryan asked if this was going to be added to the law in SB 167. He explained that SB 167 was introduced last session to implement the provisions of the constitutional amendment. Senator William Raggio authored the bill, which generated some controversy. Senator Bryan said he felt SB 167 was the vehicle which acts to put the six per cent interest provision in. Have the minutes of that original proceeding been examined to determine the original justification?

Mr. Wyatt said the original justification came from a study which was done by a representative of the University of Oregon. The initial recommendations were made to an interim study committee, chaired by Senator Brown. The problem was it was looked upon as state funds were actually being used when in reality they are not. It is increased wealth to the state.

Senator Bryan asked Mr. Jack Sheehan, Executive Director of the Department of Taxation, about the fiscal impact of the bill. Senator Bryan stated that Mr. Sheehan was not appearing as a proponent or an opponent, but is here to give the Department of Taxation's opinion as to the fiscal impact of the bill.

Mr. Sheehan said the department estimated for 1977-78 the total maximum interest would be \$234,000. That's assuming that all the agricultural land would be converted to a different use, thus causing a roll back and the differential in taxation. Even a substantial portion of the agricultural land being converted to other uses is not anticipated. The department estimates between 5 and 7 per cent may be converted to a different use and thereby be subject to a higher tax. That would be less than \$15,000 impact. (See attached memorandum from the Department of Taxation).

Senator Glaser asked if that loss would be primarily to the counties. Mr. Sheehan answered it would be to the county in which it was converted. Thus, it would have more impact in the agricultural counties.

AB 100 Places cigarette taxes directly upon ultimate consumer.

Speaking in favor of the bill were:

Mr. Sheehan gave the background on AB 100. He said smoke shops originated in Nevada in 1972 out of the Schurz area. It started out as a relatively small operation. He interpreted the existing laws at that time to be contrary to the existing state statute. He initiated steps to confiscate and halt the activity. The issue was taken to the Federal District Court. An interpretation

of the then existing laws ended in a decision by the Honorable Thompson which in effect placed Mr. Sheehan, and other people similarly interested, under a permanent injunction or restraining order from interfering with the shipment of unstamped cigarettes from originations outside the State of Nevada into the State of Nevada if they were destined for Indian reservation land. The Federal Court also held that the state excise taxes, as then written, did not apply to Indian land and, therefore, the Department of Taxation had no jurisdiction to tamper with the cigarettes once they were on Indian land. Since that time, the cigarettes business and cigarette sales on Indian land have flourished remarkably. Mr. Sheehan presented two documents. One showed the impact of cigarette sales on Indian land. (See Exhibit 1). The other document is an article which appeared in the Nevada Review and Business Economics, printed by the University, and sets forth the history of the issue. (See Exhibit 2). Mr. Sheehan said he had confidence in the figures used in Exhibit 1 because federal law requires cigarette wholesalers in the various states to report to their sister states any cigarettes which are shipped from their location to another state. The main source of cigarettes are from the Burnstein Brothers of Portland, Oregon. Oregon has a permissive situation which allows their cigarette wholesalers to sell cigarettes without any evidence of Oregon tax being paid if the cigarettes are pre-paid and shipped by a common carrier to a destination out of the state. Monthly reports from the Burnstein Brothers indicate how many cigarettes are shipped into Nevada and to what location. There is also some activity out of Utah. Mr. Sheehan explained that he and Mr. James D. Salo, Deputy Attorney General assigned to the Department of Taxation, played a part in AB 100. The bill has two basic purposes. Several million dollars a year of cigarette business is going to out-of-state wholesalers, primarily the Burnstein Brothers. Under the existing law, Nevada wholesalers are prohibited from selling any unstamped cigarettes to anyone who is not authorized by the department to accept them. Only military reservations and veterans hospitals are authorized to do so. The cigarette industry last year was responsible for collecting in excess of \$11 million. One of the purposes of AB 100 is to allow Nevada wholesalers to sell their cigarettes unstamped or untaxed. That's not going to help the tax situation. It's not going to stop the traffic, but it will help Nevada wholesalers by diverting the substantial amount of that money now going to Oregon to at least Nevada tax-paying wholesalers. He said this is stated on page seven, lines 36-37. That section, starting on line 25, in effect says that upon proof to the department, refunds shall be allowed for any cigarettes sold to the United States Government or to Veterans hospitals. Mr. Sheehan added section "c", which includes "members of recognized Indian tribe sold and delivered on Indian reservation or Indian colony." It's not mandatory for the smoke shops to purchase their cigarettes locally. This portion may seem to be contrary to the other purpose of the bill, but it makes sense. It would keep several million dollars of wholesale business in Nevada. The other equally, if not more important, purpose of the bill is the result of the United States Supreme Court case, known as the Moe case, which came out of the state of Montana. That

interpreted a law, the thrust and basic purpose of which is the same type of law that Mr. Sheehan hopes to get enacted by virtue of passing AB 100. He said there is the legal distinction of the economic burden of the tax and the economic incidence of the tax. The economic incidence of the tax today is on the wholesaler. The law says there is hereby imposed upon the wholesaler of cigarettes a tax of 10 cents per package. The wholesaler, by virtue of his pricing, passes not the legal incidence of that tax, but the economic burden of that tax, on to the retailer, who passes it on to the retailer, who passes it on to the ultimate consumer. Consequently, the legal incidence is on the wholesaler. The law which was interpreted by the Supreme Court was a tax in which the legal incidence and the economic burden was on the consumer, but the retailer had the obligation to pre-pay that tax to the wholesaler, who had the obligation to pre-collect from the retailer and pre-pay to the state. In that case, both the economic burden and economic incidence of the tax was on the consumer. He said he and Mr. Salo read the Moe case as meaning that the favored tax exempt status or the exempt situation which Congress has bestowed upon activities of Indian land, between Indians and between tribes, was intended to be just that--an economic situation peculiar to the Indian nations, tribes and individuals. It said, since the economic and legal incidence of Montana cigarette tax is upon the consumer, then if that consumer is in fact an Indian or a member of the tribe, he is exempt from that tax. But if the consumer or the ultimate purchaser of the cigarette is a non-Indian, and since the tax is on the purchaser or consumer, that non-Indian was never intended by Congress to receive the economic benefit of the tax exempt situation and that individual must pay the tax. He said to remember that Nevada has never taken the position that the state has any authority to tax transactions between tribes or Indians on the reservation. Congress has pre-empted that field. Mr. Sheehan said he feels philosophically that when 80 to 90 per cent of the individuals conducting business on the reservations are non-Indian and are in fact buying from people who are competing with other wholesalers or retailers who do not enjoy the tax exempt status, then the tax situation of the state law should apply. That's what AB 100 is intended to do.

Senator Bryan asked how Mr. Sheehan would make the distinction in terms of enforcing the provisions from an administrative standpoint. Mr. Sheehan stated that was going to be a very difficult question. Montana is experiencing trouble with that at the present time. The Supreme Court did not issue any guidelines and left that up to the various jurisdictions. This is not going to solve all of the problems. But, if enacted, it will give the state a law which has at least been interpreted by the Supreme Court. There's a provision where the department can adopt necessary rules and regulations (page three, line 5). Hopefully, through administrative regulations and possibly through cooperation between the retailers and the department, those administrative problems can be

ironed out. But they do exist and this bill does not address itself to all of those.

Senator Bryan asked Mr. Sheehan to go through the bill.

Mr. Sheehan stated there are very few salient portions of the bill that have any substance. On page one, section four beginning with line 10, is the provision which intends to put the economic legal incidence of the tax on the consumer, requiring pre-collection by the retailer and wholesaler. That is patterned after the Montana law. At the bottom of page two, there is a change in the definition of wholesaler. It is not controversial.

Senator Bryan asked what was the necessity for the change.

Mr. Salo stated it was to delete any reference to the wholesaler having revenue stamp responsibilities and to simply define the wholesaler from a functional standpoint.

Senator Bryan asked if the economic incidence no longer falls on the wholesaler, but on the ultimate consumer.

Mr. Salo answered that is correct.

Mr. Sheehan explained page three, line five says the department may provide rules and regulations for the keeping of records. That would apply to the wholesalers if they engage in selling to the smoke shops. The Department of Taxation would want to know the volume and the quantity. This section also would allow the department to adopt regulations to enforce it, should there be some other court utterances.

Senator Bryan asked what type of regulations have been promulgated in Montana pursuant to the Moe case.

Mr. Salo said that, as of December, Montana had not adopted any significant changes and regulations. They were relying primarily upon the contempt power in their existing federal case to enforce the ruling. They have acknowledged that the enforcement aspect was not clarified by the Supreme Court. There are several theories as to how it might be done, but Mr. Salo said he didn't have knowledge at the moment as to how Montana is proceeding.

Senator Bryan asked when the Moe case was decided.

Mr. Salo said one year ago.

Senator Bryan asked what kind of administrative collection problems has Montana encountered since the Moe case.

Mr. Salo said, other than the Moe situation itself in which that particular individual was under the court's jurisdiction and would be in a contempt situation if he did not comply, he didn't know.

Senator Bryan asked about the fact pattern of the case.

Mr. Salo said it was a licensed Indian trader on a federally-recognized reservation. He was selling to non-resident, non-Indians as well as to the resident Indians, and he had refused to pre-collect the tax as required by the statute. In addition, the state had attempted to require him to be licensed as a retailer. One of the other holdings in the Moe case was that he could not be required to be licensed as a retailer, but he could be required to pre-collect the tax from his non-reservation, non-Indian customers. Mr. Salo said he felt the Supreme Court left the door open as to whether or not they could require him to pre-collect the tax from non-resident Indians. That issue wasn't really decided.

Mr. Sheehan said page three, line 40 was changed to authorize the department to issue free of charge any wholesaler cigarette dealers' license to any individual who is licensed to do the same on an Indian reservation.

Senator Bryan said, under the Moe case, they could not require licensing.

Mr. Sheehan said that's correct and that's not being advocated. In fact, page four, section 20 on line 19 specifically says the department shall not charge license fees for retail cigarette dealer's license. Except for the change on page seven, which authorizes the licensed wholesalers in the state to sell to Indian tribes as they now do to military reservations, that constitutes the substantive changes. He said he was not here because he wanted to argue cigarette taxes on reservations for the rest of his career. He's here because the Supreme Court has uttered an opinion on the subject. He felt it's important because of the potential loss of revenue. There is now a loss of \$1.1 million and other legislation is coming in now, proposing to authorize counties to increase their tax to 15 cents per package. If that enabling legislation goes through, if the counties elect to do that and if the Indian smoke shops are not subject to the state taxation, those individuals will have a \$1.50 economic advantage instead of the \$1 a carton advantage they now enjoy over their competitors. The estimates on the increased volume on those cigarette smoke shops in the metropolitan areas and the estimates which have been put forth on what the extra nickel will bring in for the sports complex indicate the revenue will not be realized because a substantial portion of that projected increased revenue would be deferred because of the economic effect of the smoke shops.

Senator Bryan asked Mr. Sheehan if he felt he could develop some sort of collective apparatus, if this bill were passed, to implement the philosophy that is represented by this shift in economic incidence of the tax.

Mr. Sheehan said he did not have all the answers to that now. He is presently the vice president of the National Tobacco Tax

Association and is a member of a committee which will study this and ~~other proposed legislative bills. The committee has some ideas.~~ Mr. Sheehan said he hoped to be able to work out something that will receive some degree of acceptance from the smoke shop operators. He said smoke shop operators are here to stay. This bill or any other bill won't put them out of business. The only way the smoke shop situations could be eradicated would be to eliminate the cigarette tax altogether. That would take away their economic advantage.

Senator Bryan asked if this bill would take effect on July 1 if it were passed.

Mr. Sheehan said that is correct.

Mr. Salo responded to the questions of the mechanics of the bill and to changes in the law that are proposed. He said that the proposed language in this act would expand the regulation-making authority of the department in this particular chapter. Under existing law, it is rather specific as to who stamps taxes, who may import taxes and so forth. Page three, lines 5-9, makes it clear the department would ~~have the authority to adopt regulations~~ authorizing persons other than dealers to possess unstamped cigarettes. Similarly, there's other language in other sections of the bill, such as page five, line 34, which refers to a dealer authorized to purchase or fix cigarette revenue stamps. The language was put in partially to recognize the fact that it isn't known exactly how this will be enforced. The possibility is anticipated, for example, that Indian vendors of cigarettes on reservations may have to be authorized by regulation to lawfully possess unstamped cigarettes and perhaps some type of procedure will have to be set up whereby they would remit the tax on cigarettes sold to the general public. Conceivably, it might involve regulations with two inventories, one stamped and one unstamped. If the purchaser is a resident of the reservation, he gets a box out of the unstamped inventory. If he is not, he gets one out of the stamped inventory. It is not known exactly how this will be carried out. As Mr. Sheehan pointed out, this is a matter of concern in a number of states and it has been attempted to draft the regulation-making authority liberally to handle these particular problems.

Senator Glaser asked if an out-of-state distributor could be required to pre-collect.

Mr. Salo answered no. He said he did not believe there is enough jurisdiction over them. By the time cigarettes leave their premises, they're interstate commerce. They have no direct tie with Nevada in a legal sense.

Senator Bryan asked if the tax stamp had to be used.

Mr. Salo said that's the best way to do it. Two systems are used now--incompression or the adhesive stamp. Wholesalers are authorized to use either method. The stamp method has the advantage that if the consumer purchases a stamp package, then that is presumptive evidence that the tax has been paid. Frankly, there are

use tax provisions in the chapter so that if an individual purchases cigarettes on a reservation and leaves the reservation, those cigarettes are subject to seizure and technically he is in violation of the law because he possesses unstamped cigarettes off the reservation. If an individual were to purchase stamped cigarettes from an Indian vendor, then he would have evidence of that via the stamp. One possibility discussed last year at a meeting in Boise for legal council of various western states was to file action in the federal and state courts in an attempt to find out which court actually has jurisdiction. There are two theories. One theory is that the Indian reservations are basically federal jurisdictions, so the federal courts must be used to enforce the law. Other attorneys have interpreted the Moe case to imply that sales of cigarettes to non-residences of the reservation by an Indian vendor are tantamount to activity off of the reservation. Therefore, he subjects himself to state jurisdiction. That has not been tested. He said he was frank to admit the issue hasn't been wholly resolved and, most likely, will require litigation to clarify the issue.

Mr. Ronald Banta, District Attorney of Lyon County, said the Board of County Commissioners of Lyon County feel, in light of the economic situation in the smoke shops in Schurz and the recently opened one at the Campbell Ranch, that this is not fair to the local merchants of the county and that AB 100 is the best vehicle which has come to their attention to cure this inequity. He said he was also speaking as a practicing attorney in Lyon County and Yerington, as a representative of many and several of the merchants that are in this county and as a lifetime resident of the State of Nevada. He told how easy it was geographically to reach the Schurz smoke shop. Local merchants in the Yerington-Mason Valley area, the Chamber of Commerce and similarly interested groups have gone through a great deal of trouble to try to divert that vehicle traffic through Yerington for obvious economic reasons. The theory of these smoke shops is to get the vehicle traffic to pull into the smoke shops. That happens in these various areas. He questioned, if the Indians are able to get traffic onto the reservation and hence are exempt from taxation by the State of Nevada and its political subdivisions, why stop at the sale of cigarettes. With cigarettes now, who's to say it's not going to be expanded into other areas. As a matter of fact, the local tribal council in Yerington has recently purchased a piece of ground through a federal grant in the city limits of Yerington. One of their representatives indicated at the Assembly hearing that is in fact what they have in mind. As a taxpayer, as a resident of this county and as a representative of local merchants, he said he found this very inequitable or potentially inequitable beyond the present status. If AB 100 should pass, this will stop to a large degree these more potentially economically inequitable practices which may be pursued in the future.

Mr. Joe Midmore, representing the Tobacco Tax Council, testified his organization supports AB 100 because, as shown by Mr. Sheehan,



the regular run of fully-taxed wholesalers and retailers of tobacco products in the State of Nevada are suffering great damage. Obviously, everyone is suffering because our tax revenues are down. On the subject of tax revenues, it should be pointed out that since 1970, in the face of rising gross revenues in all other taxes, the gross revenues of cigarette taxes in the State of Nevada have been rising less and less on a percentage basis each year until, in the fiscal year 1975-76, the increase was less than one per cent. And the Department of Taxation says, on a calendar-year basis, 1976 showed a net decrease over 1975 in cigarette tax revenues. This is a very unhealthy situation. The third largest source of revenue for the City of Las Vegas is its share of the cigarette tax. Yet, it's a tax which, through legal activity, is diminishing and being sadly damaged. AB 100 isn't a particularly strong bill, but it's the best that can be done. It might be wise to accompany AB 100 with a resolution to Congress or the Secretary of the Interior to make sure they're aware of the tremendous damage being done by this situation. The sales of cigarettes by smoke shops are legal technically under federal law and treaties but the law and treaties didn't intend it that way. In addition to what the previous witness said, at the Assembly hearing, one of the members of the committee made a very direct question to one of the opponents of the bill, asking, "How do we know that you will not next be selling liquor, automobiles or operating casinos tax free?" The gentleman at the witness table was quite frank. He said, "You don't know. We've been thinking about it. We think it would be an ideal situation."

Mr. Robert Broadbent, representing the Nevada League of Cities, said that group supports AB 100 primarily from its economic impact on the cities. He said the cities and the counties collaborated last summer in conducting an analysis of the fiscal condition of the cities and counties. It was discovered that there has been a 71 per cent drop in Indian fund balances over the four-year period of study, including this existing budgeting year. That's a very dangerous and disturbing trend. a loss of tax revenues from this source would only contribute to that and enlarge that debilitating factor.

Mr. Clyde Crutchfield, of the WW Vending Company and representing the 17 vending businesses in Las Vegas and the 10 Smith Food chain markets in the area, said the economic problem confronting most of the vendors is that sales in 1973-74 were in excess of \$5 million packs a year. That has now dropped down to about \$3 million packs a year. Another economic effect upon his company, which has been in Las Vegas for 39 years, is that it originally had eight cigarette routes and now the company is down to four. This has necessitated laying off four union members outside plus people who worked inside the building. It doesn't seem right that

this is allowed to continue and a tax revenue that goes back to very important items in Las Vegas, such as schools, is allowed to be lost. There was \$6 million returned to Clark County last year and it probably will sink down to \$5 million this coming year if this unfair situation continues and there isn't some type of fair competition in the area.

Senator Glaser asked Mr. Crutchfield how many smoke shops are in the Las Vegas area.

Mr. Crutchfield said there is only one, which is on North Main Street.

Senator Glaser asked if it was close to downtown.

Mr. Prestfield said it was five blocks from downtown and it sold 897,000 cartons of cigarettes. That's over 8 million packs per year.

Senator Glaser asked if the California tourists had discovered the shop.

Mr. Crutchfield replied it was not the tourists. They are not going to drive from the hotel all the way downtown. It's the local people who are doing it. There is some bootlegging going on with it now. People have gone to the reservation and have bought cigarettes anywhere from \$3.50 to \$3.65. They have walking routes downtown. There's one woman now who has a route three days a week downtown and one day a week in North Las Vegas. The other day she's in the valley. She buys it for \$3.50 at the reservation. She says she makes 50 cents per pack and there isn't a day when she doesn't make \$50. That's the type of thing that's going on already. This puts a company like WW, which has paid taxes for 39 years, in a very bad economic condition. The employees WW has had to lay off are union members who make in excess of \$9 per hour with their fringe benefits.

Senator Hilbrecht asked how long has the smoke shop been in Las Vegas.

Mr. Crutchfield replied he was not sure, but he thought they started selling in 1974. Everyone says it has reached its point, it's not going any higher. But cigarettes sold in January and February in 1977 versus January and February of 1976 have doubled. From 1975 to 1976 they have increased 700 per cent in cigarettes sold on Indian reservations in Las Vegas.

Senator Bryan said figures provided by the Department of Taxation indicate that in January 1976, the sales in Las Vegas were

35,400 cartons and in 1977 for the same period sales were 79,000.

Mr. Crutchfield said that was correct. And in February 1976 it was 47,000. And in February 1977 it was 82,000. There has not been a leveling off. It keeps going up. It has doubled what it was just a year ago.

Senator Glaser asked if this smoke shop was an Indian reservation and what is the acreage. Mr. Prestfield said he couldn't say. He knew they were going in bumper to bumper and there are trucks picking them up by the truck load. He has seen them pick up as many as five cases, which include 60 cartons to a case.

Mr. Salo asked to respond to Senator Glaser's question. This smoke shop is actually an Indian colony, not an Indian reservation in the formal sense of the word. However, there is case law authority which indicates these Indian colonies are tantamount to reservations as far as their legal status. He said to his knowledge, Nevada is the only state with a significant number of Indian colonies as opposed to reservations. There was a U.S. Supreme Court case involving the Reno Indian colony wherein the Supreme Court indicated for all practical purposes the colony is a reservation.

Mr. Gordon Burnett submitted a written stated, which is attached.

Those speaking against the bill were:

Mrs. Frances Sand, from the Walker Indian Reservations, said that Indians do not enjoy full tax exempt status. Indians are subject to a number of federal and state taxes. The state taxes the lease hold of the reservations. Walker River Indian Reservation derives only \$30,000 per year for economic development. This is unfair. It's time Indians were allowed to increase their economic development without the state levying taxes.

Mr. Romaine Smokey, Jr., Chairman of the Dresslerville Community Council; Mr. Robert Hunter, Superintendent of the Western Nevada Agency of the Bureau of Indian Affairs; Mr. Dell Steve, Chairman of the ITC of Nevada; Ms. Linda L. Howard, Chairperson of the Yerington Paiute Tribe testified using prepared statements. Those statements are attached. Ms. Janet B. Allen and Mr. Norman B. Allen, of the Nevada Indian Commission, submitted a written statement, which is attached.

Senator Glaser asked Mr. Smokey if he felt this bill would infringe upon the jurisdictional rights of the Indian colonies or their sovereignty. Mr. Smokey replied he felt this was correct. It seems to be a step towards attempting to impose Nevada taxation authority onto the Indian reservations. These are two separate governments. Indians have their own taxation and licensing authority. The main thrust of SB 491, which passed two years ago, was the state decided that it would let Indian tribes decide if they wanted to stay under the jurisdiction of the state or retrocede

to the federal government. Retrocession enabled and insured the tribes that they would be able to retain control over their reservations. Licensing and taxation authority is the basic means of controlling all business activities on the reservation. Indians would be opposed to any steps to reverse SB 491.

Senator Hilbrecht asked if Mr. Smokey opposed levying a tax on people who are non-Indian. Mr. Smokey said it depends on where the state is trying to tax them. If the state wants to come on an Indian reservation and tax non-Indians, he opposed it.

Senator Hilbrecht said he was looking at it from Mr. Smokey's analogy. The state does have the authority to tax its citizens on sales or purchases they make in California or Illinois or New Jersey. It's called a use tax.

Mr. Smokey replied by asking where that tax was collected. It isn't collected in California. It is collected when they return to Nevada.

Senator Hilbrecht asked if Mr. Smokey felt this was unreasonable.

Mr. Smokey replied by saying Indians have very few rights left as it is. Indians are hesitant to go through another situation where more of the little bit of control they have may be lost.

Senator Hilbrecht asked if Mr. Smokey viewed it as a control conflict rather than a revenue conflict.

Mr. Smokey said that was correct. What is being talked about is losing control over the business activities on the reservation. He said he recognized the problems of the state losing tax revenues, but it was irrelevant because the state can charge a use tax when the non-Indians return.

Senator Hilbrecht asked if Mr. Smokey would have any objection if the state put a tax collector at the entry of all reservations.

Mr. Smokey said his objection would be that it would hurt the reservation's business.

Senator Hilbrecht said he was talking about it in a legal sense.

Mr. Smokey said there's no way legally that there could be an objection because the state would be within its legal authority.

Senator Hilbrecht stated the impact would be the same then.

Senator Bryan asked Mr. Hunter if he would suggest some alternative language to that proposed on lines 36-37. Mr. Hunter said that would put him in a very compromising position because he opposes the bill on the very nature that it effects the tribal sovereign rights. To suggest wording would be to put himself on the side of the people who are in favor of the bill.

Senator Hilbrecht asked if this membership or sovereignty of which Mr. Hunter spoke relates to a specific tribe or colony or reservation. Mr. Hunter said that was correct.

Senator Glaser asked Mr. Braswell which Indian colony elected to remain under state jurisdiction. Mr. Braswell said it was the Ely colony.

Senator Glaser stated opponents to the bill have said the original intent of Congress was to allow tax exempt status for Indians on Indian land. He asked Mr. Braswell if he was saying because of the competitive free enterprise system, the Indians have as much right to take advantage of this tax loophole and to sell to whomever they please.

Mr. Braswell said he felt the Indian tribes, whether they be of Nevada or anywhere else, have every right to engage in economic enterprises which will increase their dollar basis upon which their government operates. In previous testimony, Mr. Braswell said he had heard people comment on how little the tribes actually realize from some of the smoke shops which were not tribally operated. He said he understood the amount the Las Vegas colony realizes now amounts to a few thousand dollars a month. This does not sound like a lot, considering the budget of Las Vegas. But considering the fact that the tribe went from zero dollars of tribal income to even a few thousand dollars a month, it made a big impact. It gives them a start of an opportunity to begin to exercise more responsible self government. Someone can have all the authority to govern in the world, but without the money to implement the governmental program, it's meaningless. He said he believed the Indian tribes have every right to engage in the free enterprise system and make money for their own government.

Mr. John Hicks, Chairman of the Walker River Paiute Tribe of Schurz, clarified statements made in Assembly hearings last month. Regarding the status of the Walker River smoke shop, it was stated that the shop was receiving \$500 per month from Steve King for the lease of the smoke shop. This was not true. \$400 per month was being received. This is a prime example of how Mr. Sheehan can mislead committees on various information he presents. Mr. King is no longer associated with the tribe as of February 28, 1977. His lease expired. It is the tribe's intention to resume this operation in the near future. All income derived for the operation will be used for the overall social and economic development of the reservation. Previous testimony in the Assembly committee made it appear that income from smoke shops was being sent overseas. This is not the case. The state, in reality, is not losing money. The Walker River tribe does a major portion of its business within the towns of Hawthorne, Yerington and Fallon. It is the tribe's thinking that it is helping the overall economy of the state as a result of the extra income from these smoke shops. Without this extra income, the tribe would not spend what it is now. Mr. Hicks

asked how will the state determine who is an Indian? The only organization that can determine who are members of the tribe are the tribes themselves. Is the state going to impose taxes on people who are considered honorary members of the tribe? Each tribe can make any person an honorary member. Who will be stationed on the reservation to determine who are tribe members? He said he would be shocked if Mr. Sheehan thought a member of the Paiute tribe will do this. There will be no cooperation on this. There's a long-standing opinion by Attorney General Worth in 1821 which states, "So long as a tribe exists and remains in possession of its lands, its title and possession are sovereign and exclusive and there exists no authority to enter upon their lands for any purposes whatever without their consent." This is the earliest recognition of powers by Indian tribes to exclude non-Indians from their territory. Concluding, Mr. Hicks said he hoped this committee would take the Indians seriously and not think of them as a joke. The committee must realize that Indian people were put on reservations, probably in the hopes that they would die. But they did not. True, Indians have faced many hardships and they will continue to face more. However, Indians will not run. They will fight for whatever they think is right. The result of AB 100, if passed, would only make Indian people and white man bitter enemies. Maybe this is Mr. Sheehan's intention.

Mr. Lawrence Astor, Chairman of the Reno-Sparks Tribal Council, submitted 3,000 signatures of people who opposed AB 100. He said AB 100 contains language similar to the Moe decision handed down by the U.S. Supreme Court to the state of Montana. Unlike Nevada, Montana has criminal jurisdiction on the Indian reservations pursuant to Public Law 280. The amendment places a cigarette tax directly upon the ultimate consumer. However, the burden of such tax collection is on the seller. Again, due to the absence of Public Law 280 jurisdiction, the State of Nevada cannot legally put this burden on the Indian seller. Word changing in the bill does not change the fact that collection of the tax is an application of state law on the Indian reservation. Therefore, it is improper and unjust unless the state has such jurisdiction. The proposed amendments are vague in many respects. Section 370.280 allows for refunds for sales to members of a recognized Indian tribe. But there is no explanation of who decides who is a member, or what is a recognized tribe and what constitutes proof to the department. As a practical matter, the state may spend thousands of dollars and several years litigating these questions. Smoke shops are an important source of revenue for the tribes. Money derived from sales is often spent in the state and indirectly benefits the state. The money has also helped to increase the self-sufficiency of the tribes, which may also indirectly benefit the state. The tax commission, which is suggesting these amendments, is relying exclusively on the Moe decision. Reliance on the Moe decision may be futile since the U.S. Supreme Court did not explain how to enforce the tax. The cost to the state for enforcement may be greater than the amount of revenue generated. This legislation will erode tribal

sovereignty by infringing and interfering in tribal rights.

Senator Glaser said, in several testimonies, it has been said this is an important source of revenue to the tribe. Is the revenue from the smoke shop distributed to the tribal council and used to run the government? Or does the person who runs the smoke shop pocket the money?

Mr. Astor replied that the smoke shop in Reno-Sparks is tribally operated. The funds go to the tribal fund.

Senator Bryan asked if a salary is paid for the people who run the smoke shop.

Mr. Astor said that was correct. They are tribal members who are paid for funds derived from the sales.

Senator Bryan suggested hearing the remaining testimony on Thursday, April 14 when all committee members could hear the legal testimony, which may develop legal arguments that the committee hasn't heard before. It was agreed upon.

There being no further business, the meeting was adjourned.

Respectfully submitted,

*Coco Crum*

Coco Crum, Secretary

APPROVED:

*Richard H. Bryan*

Senator Richard Bryan, Chairman

SENATE TAXATION

DATE 4/7/77

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

TESTIFYING? NAME ORGANIZATION ADDRESS PHON

TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHON
Yes	Ronald T. Banta	Lyon County	Courthouse Yerington	463-2385
?	Jane R. Allen	State Indian Commission	Stewart, NV	882-3411
	Romaine Smokey Jr	Dresserville	P.O. Box 956 Gardnerville	883-1446
	FRANCIS SAM	WALKER RIVER		
Yes	Joe Braswell	Self -	808 Iny - Carson City	882-0525
Yes	Norman L. Allen	Nev. Indian Comm.	1175 Tenham Way #109 Reno, NV	784-6270
Yes	Nell Steub	Fallon Reservoir	910 MISSION RD FALLON,	423-4600
Yes	Joe Midmore	Yerington Hwy Tobacco Tax Council	Corson Branch 1111 Wesley Dr Reno	463-3820 747-4980
Yes	JAMES D. SAGO	ATTY GEN. RENO-SPARKS	1100 E. WILLIAM	885-4480
Yes	LAWRENCE ASTOR	INDIAN GLOVE	34 RESERVATION RENO 89502	329-2930
Yes	BOB HUNTER	BIA	STEWART, NV	882-3411
	Pauline Johnson	Yerington, Nev. Paiute Tribe	Box 767	463-2580
	Carolyn M. Kenton	Yerington Paiute Tribe	Yerington, NV	463-3670
	Evelina W. Pistone	Yerington Paiute Tribe	Yerington NV	463-4270
	Busby Roberts	Yerington, Nev Tribe	Yerington, NV	463-3090



CIGARETTE TAX RECEIPTS

## CALENDAR YEAR 1974

*Actual Tax Collected	Indian Sales	Growth Including Indian Sales	Actual Growth
\$ 11,198,394	\$ 141,270	+ .0931	+ .0795

## CALENDAR YEAR 1975

*Actual Tax Collected	Indian Sales	Growth Including Indian Sales	Actual Growth
\$ 11,415,090	\$ 441,867	+ .0588	+ .0191

## CALENDAR YEAR 1976

*Actual Tax Collected	Indian Sales	Growth Including Indian Sales	Actual Growth
\$ 11,328,034	\$ 1,154,740	+ .0937	- .0076

\*Actual tax revenues only. Does not reflect any license fees, nor any penalty and interest assessments.

REVENUES LOST TO INDIAN SALES  
CALENDAR YEAR 1976

Prepared By	
Approved By	

TOTAL STATE REVENUE \$1,154,740.00

395

	CIGARETTE \$ @ 100 PER CARTON	SALES TAX				
		GROSS SALES @ 3.85 PER CARTON	GROSS TAX	2%	1%	.005
CARSON CITY	36546	140702	4924	2813	1406	703
CHURCHILL	17848	68715	2405	1374	687	343
FALLON	6991	26608	931	532	266	133
CLARK						
BOULDER CITY	18366	70709	2474	1414	707	353
HENDERSON	57652	221960	7768	4439	2219	1109
LAS VEGAS	442325	1,703,951	59603	34059	17029	8514
N. LAS VEGAS	127352	490305	17160	9806	4903	2451
DOUGLAS	16257	62589	2190	1252	625	313
ELKO						
CARLIN	4323	16643	582	333	166	83
ELKO	25095	96645	3382	1932	966	483
WELLS	3559	13702	479	274	137	68
ESMERALDA	1486	5721	171	114	57	28
EUREKA	2240	8624	259	173	86	43
HUMBOLDT	6587	25359	888	507	253	126
WINNEMUCCA	9175	32628	1142	652	326	163
LANDER	6299	24251	728	486	242	121
LINCOLN	3877	14926	522	298	149	74
CALIENTE	2164	8331	291	167	83	42
LYON	14674	56494	1977	1130	564	282
YERINGTON	4749	18283	639	365	182	91
MINERAL	16659	64157	2244	1282	641	320
NYE	11163	42977	1504	859	429	214
GABBS	2064	7946	278	159	79	39
PERENING	2596	9995	350	200	100	50
LOVELOCK	3711	14287	500	285	142	71
STOREY	1642	6321	221	126	63	32
WASHOE						
RENO	219753	826818	28938	16536	8268	4134
SPARKS	71289	27446	9606	5489	2744	1372
WHITE PINE	9408	36220	1086	724	362	181
ELY	14573	56106	1683	1122	561	280
TOTAL	1,154,740					
CLARK CO TOTALS		2,485,925	87005	49718	24858	12427



# State Cigarette Taxes on Indian Lands

PEGGY TAYLOR

At the present time there is a cigarette excise tax dispute in Nevada which is intensifying a nationwide triangular war between Indian tribes, Indian traders and state tax commissions. The conflict relates directly to the imposition of state excise and use taxes on cigarettes sold within the confines of all Indian reservations and colonies within the state. This clash intertwines three fundamental concerns: the Indians' plea to control their own business destinies; the Nevada Tax Commission's desire to achieve tax parity by including Indian lands; and one Indian trader's hope to sustain his sales operations on several Indian lands.

## THE BACKGROUND

### *The Smoke Shops*

The origins of battle relate to eight smoke shops which have been set up on Indian reservations and colonies throughout the state. The first shop was established in March of 1972 at Schurz, Nevada; thereafter, other shops were opened at Fallon, Meapa, Owyhee, Las Vegas and Reno. Half of these shops are under Indian lease to one Indian trader, Stephen King; the other half are operated by the respective Indian tribes.

The smoke shops have shown considerable growth over the past four years. It is estimated that the number of cigarette cartons sold has increased from 47,000 in 1972 to over 1,000,000 in 1976. Given that state cigarette taxes are currently set at the rate of one dollar per carton, this represents a sizable potential source of state revenue. It also represents a growing and important source of income for Nevada's Indians.

### *The Stephen King Case*

Stephen King is a licensed Indian trader and entrepreneur who claims to be a member of a defunct tribe from the state of Washington. He is licensed to do business on leased property within the Walker River Paiute Reservation at Schurz, Nevada and on Indian colonies at Las Vegas, Fallon and Battle Mountain.

When King opened the Walker River Smoke Shop in March of 1972, he made arrangements to buy untaxed cigarettes from Bernstein Brothers, a licensed Oregon wholesaler. The cigarettes were shipped by federally licensed carriers (usually Consolidated Freightways) from

Oregon to Reno whereupon they were transferred to a second licensed carrier in Reno and transported to the Walker River Indian Reservation.

Chapter 370, NRS, imposes an excise tax on the wholesale distribution of cigarettes in Nevada as well as a use tax on the consumption of cigarettes. However, if cigarettes are stamped and taxed at the wholesale warehouse, they are not taxed a second time by the use tax. The total tax rate is ten cents for each package of twenty cigarettes.

In July 1973, Chapter 370 of the Nevada Revised Statutes was amended by the state legislature to authorize the seizure of unstamped cigarettes coming into Nevada under circumstances where the bill of lading on such cigarettes indicates that the consignee is an unauthorized, unlicensed recipient of unstamped, untaxed cigarettes.

John Sheehan, executive director of the Nevada Department of Taxation, is currently responsible under Nevada law for administering the tax provisions of Title 32, NRS. Acting on the supposition that Stephen King was an unlawful recipient of untaxed cigarettes and that the transfer from one carrier to another in Reno constituted a lawful interruption in interstate commerce, the State Department of Taxation moved to enforce the seizure provisions of Title 32, Chapter 370, NRS and confiscated King's cigarettes while they were being transferred on the loading dock in Reno.

In December 1973, King, in response to the confiscations, filed a suit against the Department of Taxation and moved the fight to the U.S. District Court of Nevada. The case was entitled *Walker River Paiute Tribe and Stephen King, Plaintiffs vs. John J. Sheehan et al., Defendants*.<sup>1</sup>

Approximately five years ago, the Walker River Tribe, complying with federal law, leased a parcel of their reservation land that adjoins U.S. Highway 95 to Stephen King. King operates the Walker River Smoke Shop on this parcel and pays the tribe \$500 a month for the lease arrangement; as it has turned out, he sells to both Indian and non-Indian customers. The cigarette packages do not bear any state cigarette tax stamps.

In hearing the case, district federal court judge Bruce Thompson stressed the following:

1. An essential element of the case is the question whether Article I, Section 8, Clause 3 of the U.S. Constitution protects cigarettes owned by the Plaintiff, Indian trader Stephen King, from state confiscation while in interstate commerce. The key to un-

*Peggy Taylor is a student at the University of Nevada, Reno.*

Commerce Clause under the U.S. Constitution. . . .

2. The matter of Indian rights and sovereignty is strictly a question of federal law and policy.

3. . . . the assessment and collection of a cigarette tax would to a substantial extent frustrate the evident congressional purpose of assuring that no burden shall be imposed upon Indian traders for trading with Indians on Reservations except as authorized by acts of Congress or by valid regulations under congressional acts. . . .<sup>2</sup>

Even though the Department of Taxation argued that eighty percent of all cigarette sales made by King were to non-Indians, Thompson held that there is no federal statute authorizing Nevada to tax the tobacco sales of a licensed Indian trader: therefore, neither sales to Indians or to non-Indians are taxable.

In an effort to clarify the development of state jurisdiction over Indian affairs, Thompson cited *McClanahan vs. Arizona Tax Commission*<sup>3</sup> wherein it declares that the states have been denied jurisdiction over Indian lands because repeatedly in the past federal immunity has been extended to Indians as wards of the federal government.

The *McClanahan* case also confirms the findings of the *Warren Trading Post Co. vs. Arizona Tax Commission*<sup>4</sup> in which the Supreme Court considered whether the state of Arizona had authority to lawfully impose sales taxes relating to purchases by Indians and non-Indians on Indian lands. After considering the pertinent statutes and treaties, the Supreme Court found in this case that Arizona cannot impose the tax because:

. . . Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders. . . .<sup>5</sup>

After careful consideration of the precedents established in both the *McClanahan* and *Warren* cases, Judge Thompson ruled that Stephen King's cigarettes, enroute from Oregon to the Walker River Reservation, are in the process of interstate commerce. Therefore, the pause that each shipment makes in Reno is merely to change carriers and does not substantially interfere with the flow of interstate commerce which would allow seizure under Title 32 of Chapter 370 of the Nevada Revised Statutes.

Thompson's judgment was in favor of Stephen King and stipulates that any further attempts by the state to impose a tax on cigarettes sold at the Walker River Smoke Shop would be an infringement on King's federally protected rights. Thus, the provisions of Sec. 9.5 of the 1973 Nevada Revised Statutes, Chapter 590, do not apply in this case.

#### *The Moe Decision*

In April 1976, the U.S. Supreme Court was called upon to render a decision in the case *Moe, Sheriff, et al. vs. Confederated Salish and Kootenai Tribes of the Flathead Reservation, et al.* The case, originating in Montana, was triggered by a tax dispute between the state of Montana and the Salish and Kootenai Indian Tribes together with Indian Joseph Wheeler. The conflict began when Wheeler,

a licensed Indian trader, together with an Indian employee, were arrested by the state for:

1. Failure to possess a vendor license;
2. Selling nontax stamped cigarettes.

Wheeler was leasing reservation land on which he was operating a retail smoke shop.

As a consequence of the arrest, the Confederated Salish and Kootenai Tribes brought action against the state of Montana:

. . . challenging Montana's cigarette sales tax . . . as applied to reservation Indians, and also the state's vendor licensing statute as applied to tribal members who sell cigarettes at "smoke shops" on the reservation, and seeking declaratory and injunctive relief. . . .<sup>6</sup>

Unlike Arizona, a federal statute existed that permitted Montana to tax cigarette sales made by Indian traders to non-Indians on Indian lands. As a result, even though the precedents established in both *Warren* and *McClanahan* prohibits Montana from imposing a cigarette tax on sales made to Indians on Indian lands, this preexisting federal statute does permit Montana to tax sales made on Indian lands to non-Indians.

The decision of the Supreme Court was significant in that it upheld the previous judgments of the federal district court of Montana which were:

1. The state of Montana cannot require Indian traders who operate a smoke shop on Indian lands to obtain a state license to sell cigarettes.
2. The state of Montana cannot require the Indian traders to collect a state sales tax when selling cigarettes to Indians.
3. The state of Montana can require the Indian trader to collect a state cigarette tax on sales made to non-Indian consumers.

It should be added that in rendering this decision the Supreme Court worded its final conclusion in very broad terms, possibly leaving the door open to the states to enact whole new chapters of legislation. The final statement reads:

3. To the extent that the on-reservation "smoke shops" sell to non-Indians upon whom the state has validly imposed a sales tax with respect to the article sold, the state may require the Indian proprietor simply to add the tax to the sales price and thereby aid the state's collection and enforcement of the tax. Such a requirement is a minimal burden designed to avoid the likelihood that in its absence non-Indians purchasing from the tribal seller will avoid payment of a lawful tax, and it does not frustrate tribal self-government or run afoul of any federal statute dealing with reservation Indians' affairs.<sup>7</sup>

#### **THE EFFECT OF THE MOE DECISION ON NEVADA**

##### *The Indians' View*

Tom Dressler, former member of the Reno-Sparks Tribal Council, Paiute Tribe, believes that if the *Moe* decision were to be applied in Nevada, it would no longer be profit-

able for Indian traders to operate smoke shops on Indian lands, as all of the tax free sales would be confined to purchases by Indians.

Indians have told Dressler that they feel the Supreme Court's decision in the Moe case failed to clearly define just how the states would be able to physically impose cigarette taxes on non-Indians within Indian lands. As a consequence of not laying down specific federal guidelines, future enforcement conflicts could arise particularly if the state of Nevada enters Indian lands for the purpose of arresting an Indian trader and seizing his inventory.

Even though Nevada Indians are discontented with the ruling of the Moe decision, Dressler says that the general consensus is one of respect for the findings of the U.S. Supreme Court, i.e., the Indians agree that any decisions of the Supreme Court must be accepted as final.

Speaking on behalf of the Nevada Indian Legal Services, the June 11, 1976 issue of *The Native Nevadan* argued that the Moe decision cannot be enforced in Nevada because of the weakness of Nevada's present tax laws. Nevada only authorizes wholesalers to affix stamps on cigarette packs, but at present none of Nevada's operations are classified as wholesale operations. In contrast, Montana law stipulates that the Indian retailers must affix these revenue stamps. Therefore, even though the Moe decision has affirmed Montana law, the state of Nevada would have to change its cigarette tax statute to parallel that of Montana before it could impose legal cigarette taxes.

#### *Nevada Department of Taxation's Viewpoint*

According to Jim Salo, deputy attorney general for the Nevada Department of Taxation, the Montana cigarette tax is placed on the retail consumer, Sec. 86.5606 of the Revised Codes of Montana. To date, Nevada has no specific law that determines who is taxed, the buyer or the seller. However, it is possible that the upcoming Nevada legislature could pass a law to tax the consumer which would move Nevada one step closer to the provisions granted by the Moe decision.

On the other hand, Salo feels that the Supreme Court has not chosen to deal with the issue of collection. Consequently, even if the Nevada legislature should modify its cigarette tax structure so as to correspond closely with that of Montana, it is likely that collection policies will have to be established by federal regulations because of federal control over Indian affairs.

While changes in Nevada tax structure are probable, Salo feels that they are not likely to happen soon. Governor O'Callahan's policy is one of no new taxes during his term in office.

It is Salo's opinion that the state would be far more accommodating if the Indians owned and operated all of the smoke shops and were receiving all of the profits. The Nevada Department of Taxation sees Stephen King as an outsider who is taking advantage of the unique legal status of Indian lands. Salo added that the Department of Taxation

is also concerned that King is broadening the scope of his operations by building a gas station on Indian lands near Battle Mountain.

As a final comment on the whole situation, Salo suggested that an obvious solution for the state of Nevada would be to rescind all taxation of cigarettes and make up the revenues by creating another tax.

#### *Stephen King's Reactions*

In spite of persistent efforts to interview Stephen King, he was unavailable for comment during the period of research. However, it was gleaned from various interviews that basically King's reactions to the Moe decision and to Nevada's threatened legislative action are likely to be the following:

1. He is very concerned about the upcoming legislative session; it could mean the total loss of his competitive advantage in the cigarette market — and other markets, as well.
2. It is probable that he will actively lobby against enactment of new tax legislation in Nevada. In addition, it is possible that he may seek federal assistance in providing shelters for his various enterprises.

### CONCLUSIONS

#### *Indian Traders*

The nature of Indian trading operations should be carefully scrutinized. If they are going to be allowed to survive and to continue their business operations on Indian lands, they should be required by federal law to be full-blooded Indians.

Strong equity arguments can be made against letting a non-Indian become an Indian trader. The tax exempt privileges granted by the federal government to Indian traders were originally intended to benefit Indians. As a result, it is unfair for a non-Indian to take economic advantage of this tax exemption since Indian traders have a competitive edge over other suppliers.

One can question the importance of the Indian trader to the well-being of Nevada Indians. It can be argued that entrepreneurs, such as Steve King, have shown Nevada Indians how to generate income by establishing an operating tax exempt smoke shop. But the Indians could now conceivably get along without him, operating their own smoke shops and thereby retaining all profits.

#### *Implications of the Moe Case*

The U.S. Supreme Court's ruling in the Moe case has far reaching implications for the state of Nevada as well as for Nevada's Indians. Interpretation of the Moe decision is critical because of the reference made by the Supreme Court to a federal statute that gives Montana the power to tax sales made by Indian traders to non-Indians on Indian lands. If the Moe decision relates strictly to this preexisting federal statute, it might not apply in Nevada.

Extensive legal research will have to be done to determine if a fatal flaw does indeed exist in the Moe case. If the decision is valid as it stands, then surely the state of

Nevada will move to pass legislation that would tax retail sales on Indian lands. If there is legislation, it would most probably provide for taxation of the retailer, since taxing the consumer directly would be logistically next to impossible. The taxing of retailers will undoubtedly require federal consent.

#### *The Indians' Future:*

##### *Sovereignty vs. Economic Integration*

The economic situation on most Indian lands is extremely depressed. In Nevada, the economic potential of the dry, austere Indian desert lands is largely confined to meager agricultural and recreational uses. Viable alternatives are limited and the ability to provide goods and services at prices low enough to attract non-Indian consumers to the reservations and colonies may offer the only hope for substantial and meaningful recovery. Burdened by poverty, one would think that this would be an appropriate time for the Indians to become economically integrated into the rest of society and share in the nation's economic growth and development.

This raises a basic question of tax parity: should the Indians be subject to the same taxes as the other citizens in

each state? This question touches upon an ancient problem of whether or not preferential treatment should be applied to Indians. Thus far, federal decisions and regulations have maintained a certain degree of separatism. Because of their culture and history, it can be argued that they should maintain their independence and sovereignty. In contrast, competing cigarette wholesalers are claiming that the tax exempt status of Indian lands constitutes discrimination. . . . But is it?

In light of a history of persecution, infringements on Indian sovereignty, and the resulting poverty, every effort should be made to carefully analyze and act with compassion in resolving the state cigarette tax issue.

#### *Notes*

<sup>1</sup>*Walker River Paiute Tribe and Stephen King, Plaintiffs v. John J. Sheehan et al., Defendants*, Civ. No. R-2888 BRT. Pg. 818, Federal Supplement.

<sup>2</sup>*Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685, 85 S.Ct. 1245, 14 L.Ed.2d 165 (1965).

<sup>3</sup>*McClanahan v. Arizona Tax Commission*, 411 U.S. 264, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973).

<sup>4</sup>*Warren, supra*, at 691, 85 S.Ct. at 1242.

<sup>5</sup>*Warren, supra*, at 690, 85 S.Ct. at 1245.

<sup>6</sup>*Moe, Sheriff, et al. v. Confederated Salish and Kootenai Tribes of the Flathead Reservation et al.*, S.Ct. Nos. 74-1654 and 75-60, pg.

<sup>7</sup>*Moe, supra*, pg. B2231, B2232.

U & I DISTRIBUTING COMPANY

407 South Center Street

Gordon P. Burnet  
Thomas C. Patton

Yerington, Nevada  
89447

Telephone  
(702) 463-3827

April 7, 1977

Senate Committee on Taxation

Re: A.B. 100

Gentlemen:

I am a part owner of U & I Distributing Company. We are one of the smallest wholesalers in the State of Nevada. Our business is located in Yerington, Lyon County, Nevada, and for the past several years our sales have decreased substantially while the sales on the Indian Reservations have increased.

Yerington is located approximately 20 miles from Schurz where the first Smoke Shop was opened. Now there is to be another Smoke Shop opened on the Campbell Ranch Indian Colony which is located approximately 5 miles from Yerington.

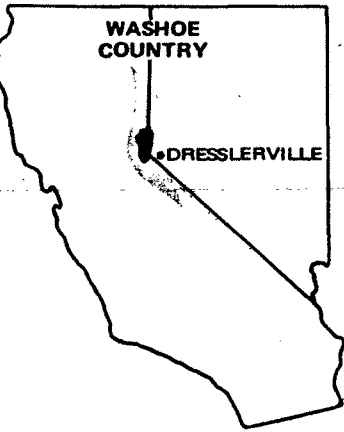
For the years 1974, 75 and 76, the Schurz Smoke Shop purchased 417,720 carton of cigarettes, whereas U & I Distributors purchased only 222,960 cartons, making the tax dollar loss for that 3 year period in our area alone at \$417,720, and this does not include the lost sales tax revenue. Now with the opening of the additional Smoke Shop in our area, we feel our sales will decline even more. Some statistics on the dollar cost of cigarettes are as follows:

	<u>All based on cartons</u>			Our	Indian	Local
	<u>Our</u>	<u>State</u>	<u>Our</u>	Whsle	Retail	Average
	<u>Cost</u>	<u>Tax</u>	<u>Cost</u>	<u>Selling</u>	<u>Selling</u>	<u>Retail Selling</u>
				<u>Price</u>	<u>Price</u>	<u>Price (inclgd. Sales Tax)</u>
Reg Size	2.70	1.00	3.70	3.94	3.65	4.61
100 Size	2.80	1.00	3.80	4.07	3.65	4.61

Thank you.

Gordon Burnet





# DRESSLERVILLE COMMUNITY COUNCIL

BOX 956

GARDNERVILLE, NEVADA 89410

702 / 782-5191

April 7, 1977

Senate Taxation Committee  
Legislative Building  
Carson City, NV 89701

Attention: Committee Members  
Re. A. B. 100

It seems readily apparent there still exists a great misunderstanding of the sovereign status of Indian Governments and, most importantly, the relationship which exists between Indian Governments and State Governments. Hopefully, you will have a better understanding if you carefully consider the following:

Each government of the world possesses inherent sovereign rights as valid governments of the world. These sovereign rights consist of "external sovereign rights" and "internal sovereign rights". External sovereign rights are those rights of governments to establish political relations with other governments of the world. Examples would be treaties and alliances. Internal sovereign rights are those rights of governments to govern within the jurisdictional boundaries of that government. Within this right of governing exists the right to regulate and control all business activities within the jurisdictional boundaries of that government. The integrity and authority of this right only exists within those jurisdictional boundaries of that government.

As an example, the license and taxation authority (the basic means of regulating and controlling business activities) of California does not apply in Nevada because Nevada is a separate government which is not within the jurisdictional authority of California. Likewise, the license and taxation authority of Nevada does not apply to the Indian Governments which exist within Nevada because the Indian Governments are separate governments which also possess their own licensing and taxation authority. These governments are not within the jurisdictional authority of Nevada (and vice versa).

It is important to realize and understand that the Indian Governments of North America were in existence before the U. S. Government. The validity of these Indian Governments was recognized by the British, the United States and other nations of the world as exemplified by the establishment of diplomatic relations between these nations through treaties and other legislation of these governments. However, after the United States became

more powerful than the Indian Governments, the external sovereign rights of the Indian Governments were diminished somewhat when the United States notified the world, (through the United States Supreme Court's case, Cherokee Nation vs. Georgia) that "any attempt by a foreign nation to form a political connection with the Indian Governments within the U. S. would be considered by the United States to be an invasion of the United States and an act of war". However, even though the Indian Governments no longer exercise their inherent sovereign rights to deal politically with other nations, the Indian Governments still possess and maintain their inherent sovereign rights to govern within the jurisdictional boundaries of our respective governments.

The policy of the U. S. Congress has been, and will continue to be, the "trust responsibility" of protecting the Inherent Internal Sovereignty of Indian Governments.

(It should also be remembered and most especially realized that the State of Nevada gave up total civil and criminal jurisdiction in 1974 (through S. B. 491) when all but one tribal government within the State of Nevada retroceded to Federal jurisdiction).

It is irrelevant how much tax revenue the State of Nevada is losing when this tax revenue exists under a separate taxation authority, that being the taxation authority and jurisdiction of the respective Indian Governments.

In summary, the integrity of the revenue-producing statutes only apply where the laws and authority of Nevada apply. Where the laws and authority of Nevada do not apply, the authority and integrity of the revenue-producing statutes also do not apply. If the Nevada Tax Commission desires to protect other retailers and eliminate this so called "unfair economic competition", the correct and proper procedure would be to request the Nevada Legislature (through appropriate legislation) to reduce or eliminate the Nevada State sales and cigarette tax within the jurisdictional authority of the State of Nevada. By following this appropriate procedure, these retailers could compete with the businesses which exist within a different sovereign jurisdiction, that being the sovereign jurisdiction of the respective Indian Governments.

In relation to A. B. 100, we believe this to be an unknowing serious attempt to infringe upon the Indian Governments' inherent internal sovereign rights of self-government and, as such, must and should be opposed not only by Indian Governments but by all people of reason, morality and justice. Therefore, I wish to have this letter enacted into the permanent records of A. B. 100 and the Dresslerville Community Council desires to go on record as opposing A. B. 100.

Senate Taxation Committee  
April 7, 1977  
Page Three

Because of the possible consequences to Indian Governments, it is respectfully requested that you defer any action on this Bill until you have had considerable deliberations over a considerable length of time in order to ensure that your decision is based upon a thorough knowledge and understanding of the consequences and costs of this Bill.

Respectfully,



Romaine Smokey, Jr.  
Chairman  
DRESSLERVILLE COMMUNITY COUNCIL

Asg

cc: Honorable Mike O'Callaghan, Governor, State of Nevada

*Bob Hunter* *eyuvv* *s*  
Testimony presented before the Senate Finance Committee Thursday,  
April 7, 1977.

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE COMMITTEE. MY NAME IS ROBERT L. HUNTER, I'M A MEMBER OF THE WASHOE TRIBE, AND FOR THE PAST 2 YEARS I HAVE BEEN THE SUPERINTENDENT OF THE WESTERN NEVADA AGENCY OF THE BUREAU OF INDIAN AFFAIRS LOCATED AT STEWART, NEVADA.

TODAY, ALONG WITH THE OTHER INDIAN PEOPLE WHO HAVE APPEARED BEFORE ME, I WANT TO VOICE MY CONCERNS ABOUT ASSEMBLY BILL 100.

TESTIMONY ALREADY PRESENTED HAVE ADDRESSED THE ISSUES OF TRIBAL SOVEREIGNTY, ENFORCEMENT OF A. B. 100 AND THE LACK OF STATE JURISDICTION. I WILL ADDRESS MY COMMENTS TO THE PROBLEM OF DETERMINING MEMBERSHIP ON A RESERVATION OR COLONY.

A. B. 100 ADDRESSES MEMBERSHIP ON PAGE 7, STARTING AT LINE 24 AND ENDING AT LINE 37. SECTION 31, SUBSECTION 1 (C) STATES THAT UPON "PROOF SATISFACTORY...REFUNDS SHALL BE ALLOWED FOR THE FACE VALUE OF THE CIGARETTE REVENUE STAMP TAX PAID...TO...MEMBERS OF A RECOGNIZED INDIAN TRIBE IF SOLD AND DELIVERED ON AN INDIAN RESERVATION."

ASSUMING THAT IT WOULD BE POSSIBLE FOR THE STATE TO IMPOSE THE PROVISIONS OF A. B. 100 ON TRIBAL LAND, THERE ARE MANY AREAS ASSOCIATED WITH "MEMBERSHIP" WHICH THE STATE WILL NEED TO RESOLVE BEFORE ANY COLLECTION OF THE "CONSUMER TAX" CAN COMMENCE.

SPECIFICALLY,

- 1) WHAT IS A MEMBER OF A RECOGNIZED INDIAN TRIBE? WHO IS GOING TO DEFINE SUCH A PERSON? WHAT IS GOING TO BE THE BASIS FOR

THIS DEFINITION? IS MEMBERSHIP GOING TO BE DETERMINED ON A VISUAL BASIS? IN OTHER WORDS, IS AN OPERATOR OF A SMOKE SHOP GOING TO LOOK AT A BUYER AND SAY "HE LOOKS LIKE AN INDIAN TO ME, THEREFORE, I WILL NOT COLLECT THE TAX..." OR WILL HE SAY "THIS DUDE BEFORE ME IS BLUE-EYED, HAS BLOND HAIR AND ACTS LIKE A WHITEMAN, THEREFORE, HE SHOULD BE TAXED." THESE ARE NOT VALID CRITERIA TO ESTABLISH "INDIANESS" BECAUSE SKIN COLOR, NOR PHYSICAL CHARACTERISTICS DENOTE AN INDIAN PERSON.

- 2) IS THE DEFINITION GOING TO BE ALL ENCOMPASSING? ARE INDIANS WHO ARE MEMBERS OF INDIAN TRIBES ACROSS THE NATION GOING TO BE ELIGIBLE FOR THE REFUND OF THE CIGARETTE TAX OR IS THE REFUND ONLY FOR RESIDENT NEVADA INDIANS? OR WILL THE REFUND BE ONLY FOR MEMBERS OF NEVADA INDIAN TRIBES? LET ME SUGGEST THAT THERE IS A WIDE DIFFERENCE BETWEEN AN INDIAN MEMBER OF A NEVADA TRIBE AND A RESIDENT NEVADA INDIAN.

THE COMPLEX PROBLEM OF DEFINING TRIBAL MEMBERSHIP IS FURTHER ENHANCED BY THE SOVEREIGNTY OF THE TRIBES. IT IS WELL ESTABLISHED THAT TRIBES HAVE THE RIGHT TO DETERMINE WHO THEIR MEMBERS ARE, AND THEY ALSO HAVE THE RIGHT TO DEFINE THE TERMS OF THAT MEMBERSHIP .

THERE IS NO UNIFORM CRITERIA FOR TRIBAL MEMBERSHIP. SOME TRIBES REQUIRE THAT A PERSON POSSESS A CERTAIN SPECIFIED AMOUNT OF THAT TRIBE'S BLOOD FOR MEMBERSHIP - 1/4 DEGREE WASHOE BLOOD; 1/4 DEGREE PAIUTE BLOOD, ETC. SOME NEVADA TRIBES ALSO STATE A RESIDENCY REQUIREMENT FOR MEMBERSHIP. FOR EXAMPLE, A PERSON, IF MEETING THE

REQUIRED DEGREE OF BLOOD, MUST ALSO HAVE RESIDED ON THE RESERVATION OR COLONY FOR A CERTAIN SPECIFIED PERIOD OF TIME.

SOME NEVADA TRIBES USE A BASE ROLL AS A DETERMINANT OF MEMBERSHIP. THESE ROLLS ARE USUALLY CENSUS ROLLS TAKEN OF ALL THOSE PERSONS RESIDING UPON A RESERVATION OR COLONY AT THE TIME IT WAS CREATED OR AT SOME LATER DATE WHEN A CENSUS WAS TAKEN. DESCENDANTS OF INDIVIDUALS ON THESE BASE ROLLS ARE USUALLY ELIGIBLE FOR MEMBERSHIP IN THAT TRIBE. TO FURTHER COMPLICATE MATTERS, MOST TRIBES HAVE PROVISIONS WITHIN THEIR CONSTITUTION AND BYLAWS WHICH ALLOW THEM TO ADOPT MEMBERS OR TO CANCEL THE MEMBERSHIP OF ANY PERSON WHO VIOLATES TRIBAL LAW.

MOST OF THESE ITEMS I HAVE MENTIONED--THE BLOOD DEGREE, RESIDENCY REQUIREMENT, BASE ROLLS AND ADOPTION PROCEDURES USUALLY ARE INTER-RELATED IN TRIBAL MEMBERSHIP PROVISIONS. EACH TRIBAL GROUP MUST BE TAKEN SEPARATELY WHEN A DETERMINATION ON MEMBERSHIP IS TO BE MADE.

THEREFORE, GENTLEMEN, YOU CAN SEE THAT TO SPECIFY MEMBERSHIP AS A REQUIREMENT FOR A REFUND OF THE CIGARETTE TAX IN A. B. 100 IS TOTALLY INADEQUATE. AS IT NOW STANDS, IT DOES NOT ADDRESS ANY OF THE SPECIAL TRIBAL PROVISIONS FOR MEMBERSHIP, AND WITHOUT FURTHER CLARIFICATION IT IS MEANINGLESS.

I BELIEVE, BECAUSE OF ITS UNENFORCEABILITY, ASSEMBLY BILL 100 WILL PROVE TO BE EXPENSIVE, USELESS AND AN EMBARRASSMENT TO THE STATE OF NEVADA. THANK YOU.

X 4  
To: Nevada Senate Committee on Taxation ( 4-7-77 )

From: Joe Braswell

There are some questions I believe you should consider in reaching a decision on A.B. 100, and I also have some statements I would like to have made a part of the record.

While this act places the cigarette tax on the ultimate consumer it does not answer two questions. First, by what authority does the State of Nevada intend to demand that Indians doing business on the reservation shall collect taxes for the State of Nevada ? Second, the legislation does not address the problems of enforcement on Indian reservations where the State of Nevada does not have jurisdiction.

On 4-25-73 S.B. No. 491 of the 57th Nevada Legislature was approved. The act contains this statement, " This section does not apply to any area of Indian country within this state wherein the Indian tribe occupying any such area has failed or refused to consent to the continuation of state jurisdiction over such area in the manner provided in sections 6 to 14 , inclusive, of this act; and the State of Nevada hereby recedes from and relinquishes jurisdiction over any such area." Pursuant to the above act, only one Indian colony opted to remain under state jurisdiction. Therefore, I submit that the proposed legislation under consideration at this time, if enacted into law, would be without force and effect on an Indian reservation, and it would be unenforceable without the consent of the tribe involved.

Some have expressed the idea that possibly when the Indians of Nevada rejected state jurisdiction they also relinquished their rights as citizens of Nevada. I wish to call your attention to another section of the retrocession bill referred to above. Section 4 of the act states, "The provisions of NRS 41.430 and 194.040 do not preclude Indian tribes who are recognized by the United States as possessing powers of self-government from enacting their own laws, regulations and ordinances, and enforcing them by their own tribal courts in accordance with their rules of procedure, but no person subject to the jurisdiction of such tribal court or governmental organization shall be denied any rights gauranteed by the constitutions of the United States or the

State of Nevada." A fact that some people simply do not know, and others simply refuse to accept, is that Indians residing on their tribal reservation enjoy tri-partite citizenship. Most of us enjoy a dual citizenship, state and national. The reservation Indian adds a third level of citizenship, that is tribal citizenship. I believe the Nevada legislative enactment referred to above gives recognition to this fact. I further believe that the enactment of A.B. 100 would be a violation of the spirit and intent of existing Nevada Law, and can only lead to expensive litigation using state tax dollars. As a tax paying citizen I would consider this to be almost in the same category as misuse of public funds.

We have heard for some years now about "lost revenue" as a result of cigarette sales on Indian reservations. The only supporting data I have heard is the number of cigarettes delivered to reservation sales outlets. It appears to me that the logic in reaching the conclusion of lost revenue on this data alone is faulty, as T.V.'s Perry Mason used to say, "It assumes a fact not in evidence." The conclusion is drawn that the same number of cigarettes would have been delivered to off-reservation dealers if they hadn't been sold to reservation dealers. Where is the proof that this would be the case? It also seems illogical to refer to something as being lost which was in the possession of the alleged loser. By what percent have total cigarette revenues been reduced since sales on Indian reservations began? If there has been no reduction, where is the loss? As for the loss in sales through vending machines, just compare the machine prices with those in almost any super-market, chain drug store, and even many service stations, and maybe that is part of the answer to the drop in machine sales.

The last point I will address is the charge of unfairness. The dictionary says unfair is "dishonest, dishonorable, or unethical in business dealings with employees, customers, or competitors". How can a business which does not violate any statute, treats customers fairly, and accrues a financial benefit to the proper governmental authority be called unfair? History tells us plainly what people have experienced the most unfairness since the original invasion of Indian country by Europeans and others. Do not equate fairness with suppression of Indian enterprise.



APRIL 7, 1977

TESTIMONY BY DELL STEVE CHAIRMAN OF ITC OF NEVADA

TESTIMONY AGAINST PASSAGE OF A.B. 100

AS CHAIRMAN OF ITC OF NEVADA I WOULD LIKE TO EXPRESS SOME OTHER VIEWS RELATED TO A.B. 100 AND HOW THIS BILL AFFECTS THE RESERVATION & COLONY'S IN THE STATE OF NEVADA.

AS MOST PEOPLE KNOW THE AMERICAN INDIAN HAS THE HIGHEST UN-EMPLOYMENT RATE IN THE U.S. 40 - 80% DEPENDENT ON WHAT RESERVATION YOUR FROM.

THE LOWEST HEALTH RATE IN THE U.S.

THE LOWEST EDUCATION RATE IN THE U.S. RIGHT NOW OUR KIDS ARE FINALLY GOING ON TO HIGHER EDUCATION, TO ENTER THE DIFFERENT PROFESSIONAL FIELDS, AND THROUGH THE EDUCATION PROCESS WE WILL DEVELOPE OUR HUMAN AND NATIONAL RESOURCES ON RESERVATION & COLONY'S.

BY THE INCOME FROM LEASES AND OWNERSHIPS OF SMOKE SHOPS WE CAN FURTHER DEVELOPE OUR RESOURCES AND CREATE OTHER BUSINESSES WHICH MEAN EMPLOYMENT AND MEANS CAPITAL INTO THE STATE ECONOMY.

BY LETTING THE RESERVATION & COLONY'S IN THE STATE SELL CIGERETTS THE STATE ACTUALLY IS REALLY ASSISTING TRIBES FINANCIALLY AND THE STATE RECIEVES A SAME CAPITAL BUT IN ANOTHER FORM OF REVENUE.

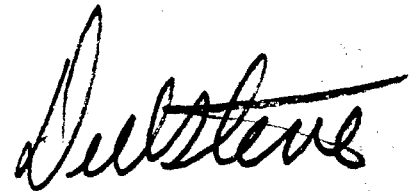
EXAMPLE WHEN A PERSON BUY'S A CARTON OF CIGERETTS THE PERSON ACTUALLY SAVES APPROXIMATELY 1.00 THIS SAME 1.00 THE PERSON SAVES PROBABLY GOES TOWARD PURCHASE OF GAS, GROCERIES, MOVIE FOR THE KIDS ETC.. BUT GOES RIGHT BACK WITH THE STATE ECONOMY REGARDLESS HE SPEND THE SAME 1.00 ONE WAY OR ANOTHER THE SMOKE SHOP MAKES APPROXIMATELY 1.00 LESS EXPENDETURES AND THIS AMOUNT GOES TOWARD TRIBAL DEVELOPMENT AND I DON'T SEE WHERE THE TAX COMISSION LOSSES 10¢ A PACK AS THEY CONTEND, IT ALL ENDS IN THE STATES ECONOMY.

THE RESERVATION & COLONY'S GOALS ARE TO TAKE OVER THE MANAGEMENT AND CONTROL OF THE SMOKE SHOPS, BY TAXING THE SMOKE SHOPS THE STATE IS ONLY TAKING AWAY THE LIMITED INCOME THAT THE RESERVATION AND COLONY'S HAVE TO DEVELOPE THEIR RESOURCES.

BY THE SENATE PASSING A.B. 100 THESE PROBLEMS IS GOING TO ARISE:

- 1) JURISDICTION
- 2) ENFORCING
- 3) HARRASING THE PUBLIC AND VOTERS
- 4) FEDERAL GOVERMENT (PROTECTION OF RESERVATION RIGHTS BY LAW)
- 5) RELATIONSHIP'S BETWEEN STATE AND TRIBES
- 6) POLITICS
- 7) LEGAL SUITS

THESE PROBLEMS ARE NOT SMALL AND I DON'T BELIEVE THAT WE ARE READY FOR ANOTHER BATTLE BECAUSE IF WE ARE WE WILL BATTLE IN THE COURT'S AND THROUGH THE DUE PROCESS OF THE LAW NOT LIKE THE OLDEN DAYS WITH GUN'S AND ARROWS, WE HAVE A BETTER CHANCE TODAY. THEREFORE I FEEL THAT THE SENATE TAXING COMITTEE AND SENATE SHOULD RECOMMEND THIS PROBLEM BE TAKEN TO THE STATE ATTORNEY GENERAL FOR HIS REVIEW AND EVALUATION ALONG WITH TRIBAL LEADER'S IN THE STATE, I HONESTLY BELIEVE A SOLUTION COULD BE REACHED BECAUSE OF THE MANY DIFFICULT PROBLEM'S RELATING TO A.B. 100  
I STRONGLY URGE A DEFEAT OF A.B. 100.



DELL STEVE  
CHAIRMAN OF ITC OF NEVADA

RESOLUTION OF THE INTERTRIBAL COUNCIL OF NEVADA

AGAINST AB 100

Whereas the Intertribal Council of Nevada (ITC) is a membership corporation of the twenty-three tribes of the state of Nevada, and as such can represent the common interests of all the tribes, and

Whereas all but one of the tribes exercise their powers of self-government under federal jurisdiction to the exclusion of state jurisdiction, and

Whereas a number of the tribes are presently engaged in or contemplating the sale of tax-free cigarettes from smoke shops located on the reservations and colonies, and the sale of cigarettes from such smoke shops has not been and cannot legally be taxed by the state of Nevada, and

Whereas AB 100, in seeming to make only numerous small changes in the system of cigarette taxation is actually an obvious effort by the state of Nevada to copy the state of Montana and by subterfuge to impose taxes upon the sale of cigarettes from Indian smoke shops, and

Whereas the Indian tribes of Nevada and the United States have in common a long history of oppression by non-Indian governments and institutions, and the Indian tribes of Nevada have few, if any, sources of income to finance their governmental activities and secure benefits and advancement for their people, and

Whereas there has been no proof that the state of Nevada either has or will suffer a loss of tax revenue due to the sale of cigarettes from reservations, and

Whereas it is the opinion of legal counsel available to ITC that the system of taxation created by AB 100 cannot be enforced on the reservation since no agents of the state may enter the reservation, neither to precollect the tax imposed by AB 100 nor to inspect the records required by AB 100 to be kept nor to force Indian sellers of cigarettes to be licensed, nor to do any other act of enforcement of state law on a reservation, then it becomes obvious that the only enforcement procedure available to the state is to harass the individual customers of the smoke shops, by making arrests outside the reservations, and such harassment of smoke shop customers will be illegal and will foster expensive lawsuits, and

Whereas the United States constitution provides that the regulation of commerce with Indian tribes shall be the exclusive jurisdiction of the United States, and

Whereas the tribes have the right, either through the ownership or leasing of smoke shops or other means, to engage in beneficial economic activity free from harassment by the state of Nevada, and

Whereas the imposition of a system of taxation and enforcement as contemplated by AB 100 is intentionally and specifically for harassment and detriment to the economic and cultural well-being of the Indians and tribes of Nevada and as such is illegal, immoral and beneath the dignity of the state of Nevada,

Now, therefore, be it resolved; that the Intertribal Council of Nevada hereby condemns AB 100 as an act of oppression by the state of Nevada against the Indian tribes, as an effort by the state of Nevada to illegally assert jurisdiction in Indian country in contravention of its own laws, to deny Indian tribes the opportunity to engage in meaningful economic enterprise and to ignore the special distinctions and body of law that surround the relationship of Indians to the federal government, and

Be it further resolved that AB 100 should not be passed, and that the chairman of the executive board of the ITC of Nevada, Mr. Dell Steve, is hereby authorized to transmit this resolution to the Legislature of the state of Nevada.

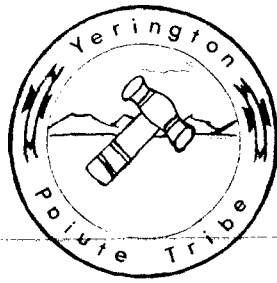
CERTIFICATION:

I do hereby certify that the foregoing resolution was duly adopted at the regularly called meeting of the executive board of the ITC of Nevada held on February 19, 1977, at which eighteen of the twenty-three members, representing a quorum, were present, by a vote of eighteen in favor, zero against, with zero abstentions.

Date: Feb. 21, 1977

Kee Dale

Kee Dale, Deputy Director



YERINGTON, NEVADA 89447

April 7, 1977

TO: SENATE COMMITTEE ON TAXATION

SUBJECT: TESTIMONY OF LINDA L. HOWARD REGARDING ASSEMBLY  
BILL NO. 100 - I AM THE TRIBAL CHAIRPERSON OF THE  
YERINGTON PAIUTE TRIBE.

Although Mason Valley and neighboring Smith Valley have been the home for Paiute Indians for over one hundred years, the Yerington Paiute Tribe was not ~~created~~ <sup>organized</sup> until 1936 under the Indian Reorganization Act. The original reservation was the present Colony. This land was purchased in 1912 by the Federal Government. In 1936 the Federal Government also bought Campbell Ranch which along with the Colony became the Yerington Paiute Reservation.

The Yerington Paiute Tribe is governed by seven members elected every two years to the Tribal Council.

The average education level of the Yerington Paiute Tribe is approximately 8th grade. Presently we have two members of the Tribe who have obtained university degrees. Of the 15 members of the Tribe now enrolled in colleges

or vocational schools, 11 are first year students, three are second year students, and only two are in their third year. This high number of tribal members enrolled in post high school <sup>programs</sup> ~~per~~grams is directly related to the tribe's self-initiative to seek and obtain Federal program monies to meet our identified need supplementary to public school instruction.

Our unemployment figures that you each have in hand is evidence of how poverty is a direct spin off of high unemployment and conversely high unemployment is a direct spin off of poverty. As you can see only 36 employed out of a potential labor force of 164 earns \$5,000 or more per year while twelve are earning less than \$5,000 per year.

As is evident from these statistics, our Tribe is faced with a situation of seeking aid to lessen and/or alleviate the barrier inhibiting self-sufficiency to which, with the 1975 passage of the Indian Self-Determination Act, otherwise known as "P.L. 93-638", we began to break through the barriers of unemployment, education and poverty and began to evaluate our own destiny. In order to create a strong operation as a solid foundation, \$30,000 is required for implementation and operation.

To meet this financial requirement, we utilize the Federal Government P.L. 93-638 for cost support. But, P.L. 93-638 is a formula grant based on population. Our tribal population approximates a figure of 387. The total

amount of that grant (\$16,042.00) is only a small portion toward meeting the projected cost of \$30,000. If the tribe wants additional monies, proposals have to be written and submitted to Federal Agencies for funding, and if in the end the proposal is rejected, the Tribe is exactly where we started.

The only other alternative that the Tribe can press is the economic developmental field, whereby tribal enterprises are developed and operated to support the additional costs that are not otherwise covered.

The major constraint to economic development on the Yerington Paiute Reservation is the ~~lack~~<sup>lack</sup> of capital necessary to develop business enterprises.

The land is held in trust for the Indians by the U. S. Government. This trust status makes it nearly impossible to raise capital through the private section of our economy, i. e. banks, loan agencies, etc., because land held in trust cannot be readily mortgaged. The trust status of the Indian Reservation does provide the Indian tax exemptions that could give him an advantage in the economic world.

Because the Yerington Paiute Reservation has sufficient land in which to develop business enterprises, the Tribe believes that these potentials (welding, auto mechanics, mini-mall, gas station, smoke shop, game farm, land acquisition, land development) must be implemented to make the Tribe self-sufficient, self-directed and self-sustaining in moving toward self-determination for our reservation and people.

In addressing the smoke issue as it relates to tribal enterprise development, my stand as Chairman of the Yerington Paiute Tribe is that with passage of said bill, we would be placed in a defensive situation; one in which the economic welfare of the Tribe would be seriously threatened. We would be forced to take any and all necessary legal action to protect the interest of the members of the Yerington Paiute Tribe in becoming economically self-directed and self-supported.

I question the intent of this Bill that the State of Nevada would attempt to collect a sales tax on smokes sold to non-Indians for these reasons:

- 1) The State of Nevada does not require the local Yerington businessman to identify their purchases as Indian and collect a tax which in turn is utilized to support our Tribal Government.
- 2) The State of Nevada offers no benefits to our Tribal Government from the sales tax revenue as it provides to local and county governments. The majority of City or County services are provided on a federal contract, cost-reimbursement or voluntary basis.
- 3) We are in the process of establishing a tax base which would be collected from tribal enterprise sales which would be designated to meet the identified need of tribal Governmental services.
- 4) What is the State of Nevada doing to prohibit an adjacent State from taxing at a lower basis. Is the State of Nevada going to police the State lines to collect the remainder of the tax not collected by the other State which is lower than the State of Nevada.



These issues I raise are very real and sensitive. I truly question the equality of this bill. If the Bill's intention is to raise the revenue of the State of Nevada - then I strongly suggest to each of you that our Tribal Government as well as all the other tribal groups in the State of Nevada receive our equal portion of the tax revenue distributed to City and County Governments. If it is fair for County's and City's Governments to collect a tax when an Indian purchases any goods and no identification is required by the non-Indian mechants, then it is equally fair that tribal merchants be allowed to tax non-Indian purchasers with the tax benefiting Tribal Government. If this is not so true then the old saying which we Indian people still believe is re-affirmed that is - that the "White man still speaks with forked tongue".

\* \* \* \* \*



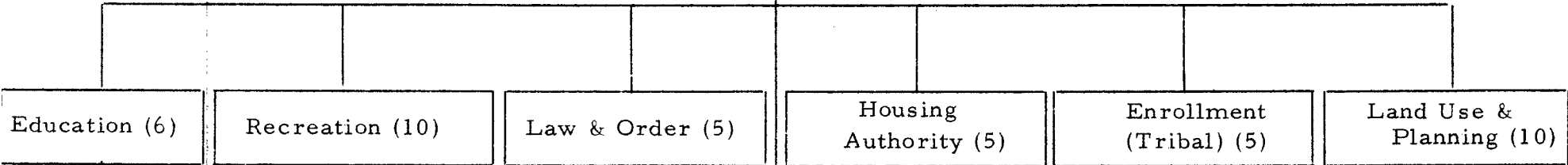
YERINGTON, NEVADA 89407

(500)  
TRIBAL MEMBERS

TRIBAL COUNCIL

Linda Howard-Chairperson  
Buster Roberts, Jr.  
Pauline Johnson  
Marie Brown  
Johnny Mitchell  
Francis Conway  
Robert Williams

COMMITTEES



Johnson O'Malley  
Program

Career  
Education

Title IV, Part C

Economic Development  
Administration (5)

ORGANIZATIONAL CHART  
OF THE  
YERINGTON PAIUTE TRIBE

(500)  
TRIBAL MEMBERS

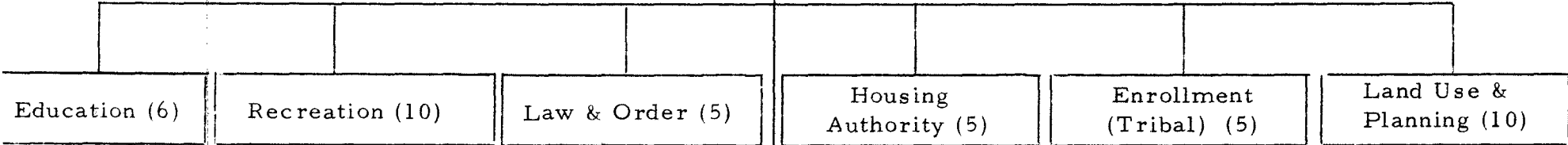
TRIBAL COUNCIL

MEMBERS:  
Buster Roberts  
Pauline Johnson  
Marie Brown  
Johnny Mitchell  
Francis Conway  
Robert Williams

CHAIRPERSON  
Linda L. Howard

STAFF:  
Secretary  
Bookkeeper  
Business Resource Developer  
Tribal Coordinator

COMMITTEES



Johnson O'Malley  
Program

Career  
Education

Title IV, Part C

Economic Development  
Administration (5)

ORGANIZATIONAL CHART  
OF THE  
YERINGTON PAIUTE TRIBE

BUREAU OF INDIAN AFFAIRS

REPORT OF LABOR FORCE

Data are for <sup>August, September</sup> & ~~October~~ (month) 1976 (year)

RESERVATION:

Yerington Paiute Tribe

Year: 1976

State: NEVADA

	TOTAL	MALE	FEMALE
Total Resident Indian Population (b+c excluding D)	387		
b Within the reservation.....	217	106	111
c Adjacent to the reservation (in Okla., Indians in former reservation areas.....)	170	89	81
d Other Indians, not included in labor force data (In California rural parts of counties with reservations or rancherias).....	-0-	-0-	-0-
e Total under 16 years of age included in line "A"	143	75	68
<u>RESIDENT INDIAN POPULATION OF WORKING AGE (16 years old and over)</u>			
F Total 16 years and Over (A minus e)	244	120	124
g 16 - 24 years.....	78	37	41
h 25 - 34 years.....	47	25	22
i 35 - 44 years.....	37	16	21
j 45 - 64 years.....	55	27	28
k 65 years and over.....	27	15	12
M Not in Labor Force (16 Years and Over), Total (n + o + p + q)	80	33	47
n Students (16 years and over, including those away at school).....	70	33	37
p Women for whom no child-care substitutes are available.....	10		10
q Women, housewives, physically or mentally disabled, institutionalized, etc.....	0		0
R Potential Labor Force (16 yrs. & Over) F minus M)	164	77	87
S Employed, Total (t+u)	48	25	23
t Employed, earning \$5,000 or more a year (all jobs).....	36	22	14
u Employed, earning less than \$5,000 a year (all jobs).....	12	3	9
V Not employed (R minus S).....	116	53	63
w Of these, persons actively seeking work			

Prepared By:

YERINGTON PAIUTE TRIBE

Attachment:

Demographic Survey

Area Director:

Superintendent:

*Robert Hunter*

Area:

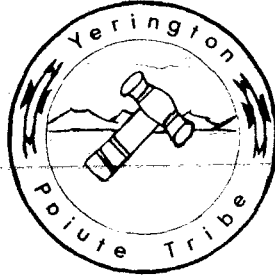
Approval Date:

Agency:

Approval Date:

Western Nevada Agency

11/16/76



Resolution No. RY-77-09

YERINGTON, NEVADA 89447

RESOLUTION  
OF THE  
YERINGTON PAIUTE TRIBE

Authorizing Native American Rights Fund to represent the Yerington Paiute Tribe in protecting the Tribe's right to self-government free from unauthorized interference by the State of Nevada.

WHEREAS, the legislature of the State of Nevada is proposing enactment of Assembly Bill No. 100 proposing a tax on the purchase or possession of cigarettes by non-Indian consumers in said state, including transactions within the Yerington Paiute Indian Reservation, and

WHEREAS, the Yerington Paiute Tribe intends to establish one or more smoke shops on its reservation as a tribal business enterprise for the purpose of obtaining revenue to improve and increase tribal governmental services to members, and

WHEREAS, the cigarette tax proposed in Assembly Bill No. 100, if enforced against the tribal business, will interfere with tribal self-government, by imposing upon the intended tribal business an economic burden not authorized by Congress or by the Tribe; and

WHEREAS, if the tax as proposed is enforced against the Tribe, anticipated tribal revenues will be substantially diminished to the economic and governmental detriment of the Yerington Paiute Tribe.

NOW THEREFORE BE IT RESOLVED THAT, the Native American Rights Fund be and hereby is, authorized and directed to be the official, legal representative of the Yerington Paiute Tribe in protecting the right of the Tribe to be self-governing free from unauthorized interference through exercise of the power to tax by the State of Nevada, and further that Native American Rights Fund be, and hereby is, authorized and directed to take any and all appropriate action, including litigation, to protect the aforementioned right of the Yerington Paiute Tribe.

Linda L. Howard, Chairperson  
Yerington Paiute Tribal Council

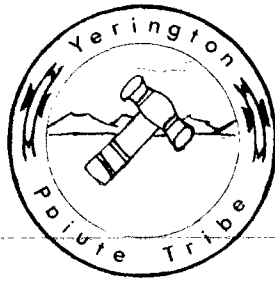
CERTIFICATION

As Recording Secretary of the Yerington Paiute Tribe, it is hereby certified that the foregoing resolution of the governing body of the Yerington Paiute Tribal Council, of the Yerington Indian Reservation, composed of a Chairman and 6 members of whom -

1. Linda Howard
2. Buster Roberts
3. Marie Brown
4. Pauline Johnson

four constituting a quorum were present at a meeting held on the 6th day of APRIL, 1977; and the foregoing resolution was accepted by an affirmative vote of 3 for 0 against, pursuant to the authority contained under Article VI, Section I (a) of the Yerington Paiute Tribe's Constitution & By-Laws.

Carolyn M. Kenton  
Recording Secretary  
Yerington Paiute Tribal Council



YERINGTON, NEVADA 89447

April 7, 1977

TO: SENATE COMMITTEE ON TAXATION

SUBJECT: TESTIMONY OF YVONNE T. KNIGHT -  
ASSEMBLY BILL NO. 100

My name is Yvonne T. Knight, I am an attorney representing the Yerington Paiute Tribe of Yerington, Nevada concerning the effect of Assembly Bill No. 100 upon their interests.

You have heard the testimony of Linda L. Howard, Chairperson of the Yerington Paiute Tribe of Nevada. I will not repeat any of the points she raised; rather my purpose is to raise for your consideration several legal questions which arise from the present draft of A. B. No. 100.

First of all, while Moe v. Salish and Kootenai Tribes upholds the State's right to impose a tax on non-Indian consumers on an Indian Reservation, and correspondingly to require the retailer on the reservation to collect such tax from the non-Indian, at least when the Tribe itself has not imposed its own cigarette tax, Moe expressly denies the State any right to tax Indians.

We submit that to require tribal members to pay in the first instance the State tax and then to apply for a refund constitutes nevertheless a tax on Indians which is expressly prohibited by the decision in Moe. Such a collection scheme would seriously impede any effort by Indian Tribes to tax their own members since the tribal member would be faced to pay a price for cigarettes which includes both State and Tribal tax.

Furthermore, Moe does not establish any right of the State to require Indian Tribes who engage in the retail cigarette business on their reservation to obtain a State license. Clearly this is a direct interference with tribal sovereignty prohibited by Federal law and indeed by the Section 370.075 of Chapter 370 of N.R.S. which states that nothing in Chapter 370 shall operate "to infringe upon the sovereignty of any Indian Tribe, organized under the Indian Reorganization Act."

Indeed, there may be a question as to whether Moe upholds any right of the State to license retailers on reservations at all.

Secondly, when Congress intends to permit States to levy taxes on sales through retail outlets operated by the Federal Government or Tribes on Federal reservations, it does so expressly. A case in point is "The Buck Act", 4 U.S. Sec. 103. The Buck Act expressly authorizes the Officer in Charge of (a Federal) Reservation to collect and pay State taxes on gasoline sold, purchased, stored or used by retail outlets operated within the



reservation. Thus only by virtue of such an act can the State legally impose

its tax on Indians or Tribes or the United States within the borders of  
Federal Reservations.

Thirdly, we submit that it is unclear whether Section 31 (c) of Assembly  
Bill No. 100 authorizes a Tribal member who is also a retail dealer on  
the reservation to purchase cigarettes from a licensed State wholesaler and  
then apply for a refund of the included taxes. Such an interpretation is  
consistent with Moe and indeed, would bring business back to State wholesalers.

Fourthly, in our opinion, the enforcement mechanism provided for in Section 30  
of Assembly Bill No. 100, i. e. confiscation of cigarettes in Interstate  
Commerce is still constitutionally defective under the decision in Walker River  
Paiute Tribe v. Sheehan, particularly where some of the cigarettes are destined  
to be sold to Indians on the reservation, which are beyond the reach of the State  
taxing power.

In summary we submit that Assembly Bill No. 100 raise more legal questions  
than it answers, and create more legal problems than it solves. We think it  
needs to be considered more closely and redrafted in light of the considerations  
raised by the Yerington Paiute Tribe. As it now stands, it is simply a breed-  
ing ground for lawsuits which neither the Tribes nor the State desire.

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# NEVADA INDIAN COMMISSION

1135 TERMINAL WAY  
SUITE 109  
RENO, NEVADA 89502  
(702) 784-6248

MIKE O'CALLAGHAN  
GOVERNOR

April 6, 1977

TO:

FROM: Nevada Indian Commission

SUBJECT: Recommendations concerning AB100

NRS 233A.090 states that:

The purpose of the Nevada Indian Commission shall be to study matters affecting the social and economic welfare and well being of American Indians residing in Nevada... The Commission shall recommend necessary or appropriate action, policy and legislation or revision of legislation and administrative agency regulations pertaining to such Indians. The Commission shall make and report from time to time it's findings and recommendations to the Legislature, to the Governor and the public...

Under the authority of NRS 233A.090 through 233A.100, the Nevada Indian Commission respectfully submits its recommendations concerning Assembly Bill 100; which places the cigarette tax on the ultimate consumer. Any comments concerning this text should be directed to the Executive Director of the Nevada Indian Commission, Mr. Norman L. Allen at (702) 784-6248.

Respectfully submitted,  
For the Commissioners of the  
Nevada Indian Commission

*Janet B. Allen*  
Janet B. Allen, Commissioner

*Norman L. Allen*  
Norman L. Allen, Executive Director

I.

The gamut of laws concerning Indians is a complex and interlocking field comprising jurisdiction, special legal and trust relationships, multitudes of case laws, Indian treaties, Federal legislation, Indian rights, legal status of Indian tribes and many other areas. It is a field so wide and diverse that an entire title of the United States Code is set aside for the affairs of Indians (25 U.S.C.)

AB100 seeks to address only one component of Indian law - that of taxation. Yet, as testimony and other evidence presented before the Assembly Finance Committee illustrates, taxation unquestionably encompasses jurisdictional, political and other areas special to the relationship between the Indians and the Federal government.

It is well known that before a government can impose a tax, it must possess the necessary authority and jurisdiction to assert that imposition of taxes. In consideration of this, it is imperative to fully comprehend the limitations upon a government's, in this case-the State's, power to tax.

The first of these limitations restricting Nevada's power to tax is the Instrumentality Doctrine. The Instrumentality Doctrine requires that "the power and duty of governing and protecting tribal Indians is primarily a federal function and that a state cannot impose a tax which will substantially impede or burden the function of the Federal government. The Doctrine is limited to property or functions of Indians who are, in some degree, under

federal control or supervision".

Another limitation is federal statutes which frequently require that functions be reasonably incident to a federal function where tax immunity is afforded to individual Indians by federal statute or treaty by way of an inducement to a voluntary transaction the courts have held that immunity becomes contractual since the individual Indian acquires a vested right to the exemption which is protected against Congress itself by the Fifth Amendment. (Cohen, Federal Indian Law; also see Choate v. Trapp; 224 U.S. 665).

A further example of a federal statute limiting the taxing powers of states is to be found in the Enabling Acts and Organic Acts authorizing the formation of state and territorial governments and expressly exempting Indians and Indian property from the application of state laws (Cohen, Federal Indian Law). . . Such clauses usually indicate that nothing in Enabling Acts shall impair the rights of persons or property pertaining to Indians or that Indian lands shall remain subject to absolute jurisdiction of Congress. (Cohen, Federal Indian Law).

Provided further, that nothing in this act contained shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Nevada, until said tribe shall signify their assent to the President of the United States to be included within the said Territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent for the government to make if this act

had never been passed. (Act of Congress (1861) Organizing the Territory of Nevada 12 Stat. 209-214).

Another limitation includes the insertion of the language of the Enabling Act in state constitutions (See: Constitutions of Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah and Washington).

Another point to consider, prior to passage of any legislation, state or federal, is that of tribal sovereignty. Tribal sovereignty is derived from a tribe's own autonomous supreme power over its body politic and not from the United States. United States laws delineate tribal authority but are not the origin of tribal sovereignty. In 1832, Chief Justice John Marshall referred to Indian tribes as "distinct, independent political communities". Worcester v. Georgia, 31 U.S. (Pet.) 518. The United States Supreme Court, in 1975, called tribes "unique aggregations possessing attributes of sovereignty over their members and their territories". U.S. v. Mazurie 419 U.S. 544. Thus, it is generally accepted that state taxation laws do not apply to Indian tribal members within Indian reservations exterior boundaries whether they be trust lands or not. U.S. v. Rickert, 188 U.S. 432; McClanahan v. Arizona Tax Commission, 411 U. S. 164; Moe v. Confederated Tribes, 44 USLW 4535.

Although it is the expressed belief of some that there exists a distinction between Indian reservations and Indian colonies, the Supreme Court of the United States has made it clear that no such distinction exists between Indian reservations and colonies when it held that "Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out, and it is immaterial whether Congress designates

a settlement as a reservation or colony" - U. S. v. McGowan, 302 U.S. 535:

The fact that the United States made treaties between itself and the various Indian tribes should be recognition enough of the tribes' autonomous and independent powers and their existence as sovereign entities. Tribes, as separate and distinct nations, conceded the right to external sovereignty but retained internal sovereignty in exchange for the care and protection of the Federal government of the United States. 58 Calif L. Rev. 452 (1970). It is commonly believed that treaties and treaty making ended with the Indian Appropriation Act of 1871. It is true that the making of further treaties with Indian tribes ended in 1871 but treaties in existence at the time remained both in force and enforceable.

The United States Constitution - Article II, Section II - states that the President shall make treaties with the advice and consent of Congress provided that two thirds of the Senate present concurs. Treaties are regarded as part of the supreme law of the land after due execution and ratification by proper authorities. Treaties with Indians have been confirmed by courts as having equivalent dignity and force as with treaties made with foreign nations. Holden v. Joy, 17 Wall. 211.

Indian treaties frequently addressed such areas as international status of tribes, dependence of tribes on the United States, commercial relations, jurisdiction, and the control of tribal affairs. As Article II of the United States Constitution granted the Federal government the authority to deal with tribes, it is clear that without federal legislation to the contrary, Indian land was not to be included within a state's jurisdiction and are beyond the state's power to impose state taxes.

Another analogous point is that enabling legislation was passed in 1864 which permitted the State of Nevada to organize for statehood. Then, it follows that, since the Indian Reorganization Act of 1934 allowed Indian tribes to adopt tribal constitutions and to formally organize a duly elected government that Indian tribes, like states, are possessed of the same sovereign status as were various states which comprise this nation.

II.

Moe v. Confederated Tribes, 44 USLW 4535 held that states could require dealers located within Indian reservations to precollect sales taxes for cigarette sales but the case failed to state how the tax collection should be enforced. AB100 would require the dealer located on a reservation to precollect the sales tax which would, in effect, make them tax collectors for the State. Courts have held that state laws do not, generally, apply on Indian reservations, whether the lands are trust or not. The United States Supreme Court held that the State of Arizona may not lawfully impose or collect a sales tax when the transaction takes place on an Indian reservation. Warren Trading Co. v. Arizona Tax Commission, 380 U.S. 685.

A primary distinction must be made concerning Public Law 280 in Montana and in Nevada. Moe v. Confederated Tribes can be distinguished because the defendant's tribe was located on a partial P.L. 280 reservation whereas the Nevada Indian tribes, Ely Indian Colony excepted, are under federal, not state jurisdiction. Public Law 83-280 (67 Stat. 588) conferred state criminal and civil jurisdiction without the consent of Indian reservations. Nevada assumed state criminal and civil jurisdiction under P.L. 280 through

passage of S.B. 121 (April, 1955). Public dissatisfaction with P.L. 280 prompted the passage of Public Law 90-284 (82 Stat. 80) in 1968 which limited further state assumption of criminal and civil jurisdiction on Indian reservations by requiring the consent of Indian reservations before extending jurisdiction over them. P.L. 284 also allowed the transfer of state jurisdiction back to federal jurisdiction through referendum elections. Under P. L. 90-284, Nevada passed S.B. 491 in 1973, after which 15 of 16 Indian groups voted to retrocede back under federal jurisdiction. (See: Nevada Indian Commission Biennial Report, 1972-74, pp. 11-12, 15-18). It is important to note that it was not the best interest nor the view of Indians that prompted the passage of P.L. 93-284 but rather, the states advocated economic inability to cope with the high cost of asserting state jurisdiction in Indian country. (Indian country defined in 18 U.S.C. 1151).

Presumably, it is easier to collect state sales taxes on a Public Law 280 Indian reservation. Without considering the aspects of P.L. 280, the Supreme Court held that states have no inherent right to tax Indians or Indian property. McClanahan v. Arizona Tax Commission, 411 U.S. 164. But in Byron v. Itasca County, 196 S. Ct. 2102, the court held P.L. 280 does not affect the ability or inability of a state to tax in Indian country as states received no Congressional grant of authority to tax through P.L. 280.

Thus, though AB100 requires the dealer to precollect the sales tax, it is doubtful that this section can be enforced. As with Moe v. Confederated Tribes, the question of enforcement has not been addressed. Criminal sanctions, by the State of Nevada, on dealers on Indian reservations or colonies, especially in the absence of P.L. 280, are not, in this instance, available to the State.



## III.

AB100, Section 31, allows, upon proof satisfactory to the Tax Department, refunds for the face value of the cigarette revenue stamp paid to, among others, members of recognized Indian tribes on reservations or colonies. AB100 does not clearly define, however, what the membership qualifications are for members receiving refunds nor does it define what the acceptable proof of membership would be. Membership requirements for Indian tribes, and, indeed all Indian reservations, varies. (See: Cohen Federal Indian Law, P. 2). Requirements for tribal memberships vary, even in Nevada, from a quarter degree Indian blood to mere decendency from an enrolled member. Further, membership qualifications are described in each reservation or colony's constitution.

"If a person is three quarters English and one quarter Indian, it is absurd to call him an Indian ethnologically, but in a legal sense, he is one. The Federal government attaches to the definition of Indian, a requirement of blood quantum. They require a person who is of Indian blood and who is a member of a recognized Indian tribe now under federal supervision. This concept exemplifies that in dealing with Indians the Federal government is dealing not with a particular race but members of certain social political groups toward which the Federal government has assumed special responsibilities." (Cohen, Federal Indian Law, P. 2).

It is quite conceivable that a smokeshack dealer could claim all his patrons are legal since AB100 does not address the definition of

Indians. Would the burden be placed on the dealer to prove the ethnicity of his customers? Would patrons be reduced, by the State, to carrying Indian identification cards, even though tribes, and, indeed the United States government do not require Indians to carry cards? Would it be a constitutional violation for one group of persons to be required to carry identification and not require other segments of the populace to carry them?

Embodied within AB100 is the implication that the State is capable of verifying the accuracy of the names on lists submitted for refunds for sales to Indians under Section 31. The Tax Department would be expected to have access to tribal rolls of all Nevada tribes in order to verify the Indian patrons. However, since only a small portion of the total U. S. Indian population is in Nevada, it is presuable that some sales will be made to Indian people from other states. If a reservation from another state, refused to release it's tribal rolls to Nevada, how could Nevada compel the reservation to release those rolls.

AB100 provides criminal sanctions for the possession of contraband cigarettes. Recognizing that a non-Indian could be prosecuted for possessing unstamped cigarettes, and, since AB100 language is unclear, it is entirely possible that an Indian who possesses unstamped cigarettes purchased on a reservation could also be prosecuted similarly.

IV.

It is the position of the Nevada Indian Commission that Assembly Bill 100 is not a bill structured upon the most careful considered deliberation but, rather, one designed to meet a concern of the moment and thusly falls prey to an oversimplification and misinterpretation of only one factor in the spectrum of law dealing with Indians; further, that such legislation is of such construction that it would, in the foreseeable future, place the Tax Commission of the State of Nevada in a nearly untenable position of attempting to, what, in our opinion, would amount to arbitrary enforcement of a law based upon an unworkable premise and shaky intent.

At this time, available evidence has been accumulated to show that smokeshop operations have not ceased under the legislation passed by the Montana Legislature. Both the state cigarette law and the Moe Decision have had scant effect or impact upon that reservation which, unlike Nevada's Indian communities, is still partially under P.L. 280 jurisdiction. It would seem to follow that enforcement of a law on Indian communities not under P.L. 280 would be, at most, a thankless and unproductive sisyphian task.

In consideration of this and all other facets of this statement, the Nevada Indian Commission would recommend to the Legislature and to the Governor of the State of Nevada, the following:

1. AB100 raises not only questions of Constitutional propriety but a host of others as well, those which deal with a cross section of economics, sub-culture and

political matters. AB100, therefore, should merit the best deliberations of not only the Taxation, but the Judiciary, Government Affairs, Finance, and all other Committees in order to hammer out a more equitable and enduring solution. AB100 should be referred to other committees for additional study before it is voted upon in the full Senate.

2. As studied considerations are called for on the part of the State, so should the best deliberations of the Indians be a necessary part of and to the formulation of a workable solution in the matter of Smokeshops and other matters concerning the State and it's Indian citizenry. Each group must have the most complete and current understanding of each others position and, even if the end result was expensive and time consuming litigation, it should be only after each group has met and both sides fully understand each others posture. A select committee of legislators should be selected to meet with Indian leaders to discuss the issues surrounding AB100.

## Department of Taxation

CARSON CITY, NEVADA 89710

In-State Toll Free 800-992-0900



MIKE O'CALLAGHAN, Governor

JOHN J. SHEEHAN, Executive Director

April 7, 1977

Memorandum

To: Senator Richard Bryan, Chairman and  
Members of Senate Taxation Committee

Fr: James C. Lien  
Deputy Executive Director

Subject: AB 447

AB 447 removes interest computations from the taxes deferred due to property owners receiving agricultural use or open space use assessment.

The agency has computed that for fiscal 1977-78, such interest charges approximate \$234,000, that in fiscal 1978-79 they would approximate \$468,000 and in fiscal 1979-80 approximately \$701,000.

However, one must keep in mind that those interest charges fluctuate based on revaluations of the second values; also, that while this is interest on taxes due, approximately only 5 or 6 percent of such deferred taxes will be collected. In order for the full amount of interest to become payable, all property given preferential agricultural or open space treatment would have to be converted to another use.

The reason that interest was originally included was that some legislators felt that persons were receiving a privilege by having their taxes deferred for a period of time and that as they had use of that money which normally would have been paid to an entity, they should pay interest for use of that money. Some members of the 1975 Senate Taxation Committee felt that to not charge interest was tantamount to providing an interest free loan to the property owner; a loan which may never have to be repaid if the property is not converted. It is not revenue that the entity would normally expect to receive as it is an amount above taxes normally due.