



September 11, 2008

Honorable J. B. Van Hollen, Attorney General  
State of Wisconsin Department of Justice  
114 East, State Capitol  
P.O. 7857  
Madison, WI 53707-7857

**RE: Statewide and Local Tribal Issues Affecting State Subdivisions**

Dear Attorney General Van Hollen,

**Purpose of Letter.** This letter begins what we hope will be a growing dialogue between your office and affected local governments to find a solution pathway that ameliorates law enforcement jurisdictional conflicts, costly litigious activities resulting from tribal governance overreaching, and escalating loss of state property tax lands transferring into federal trust that are also falling out of local representative government. As you know, all eleven Wisconsin Indian tribes are co-located within at least one, and often more, Wisconsin counties.

Attorney General Van Hollen, your May 1<sup>st</sup> Listening Session in Green Bay was productive time well spent and sets a model we deeply appreciate and encourage. We would hope you might also consider forming either a fact-finding committee or study group of equal representation to seek statewide policy solutions that would bring a measure of equity to local governments affected by tribal government actions.

**Background on Hobart.** The Village of Hobart has a population of 5,785 residents residing within a 33-square mile municipal boundary. Approximately 1,000 residents (17%) are enrolled members of the Oneida Tribe of Indians of Wisconsin ("OTI"). With an annual operating budget of \$3.4 million dollars the Village has sixteen full-time employees and the statutory duty for public safety and the general welfare (roads, infrastructure, law enforcement, general government). The OTI has an annual operating budget of \$527 million dollars with no duty to the general welfare or public safety. The disparity here speaks for itself.

The Village of Hobart is 100% co-located within what was the boundary of the OTI reservation and has been the recipient of intentionally aggressive actions by the OTI over the last ten years. The original reservation was disestablished by the federal government's Dawes (General Allotment) Act of 1887, the Burke Act of 1906, and a special "Oneida Provision" Act of Congress, also in 1906. Three congressional acts fully allotted the entire reservation by 1893, but for 40 acres.

We define “aggressive” as intentional obstruction of municipal projects, escalating pursuit of fee-to-trust, loss of 33% of the municipal land base, and public and political demeaning/ostracizing of Hobart officials from neighboring colleagues. We have included a brief article entitled, “A Less Than Neighborly Neighbor,” that more clearly describes numerous incidents of tribal government aggression and overreaching, along with a map that illustrate the volume and rapidity with which tribal land acquisition is occurring.

As you know, tribal governments are purposive in form in that Congress federally recognizes them for the single and sole purpose of having autonomous governance over their lands and enrolled members. Congress has afforded a legal immunity to shelter this special purpose of Indian tribes from intrusion. All other governments are those authorized under federal and state constitutions as representative governments. When a private, purposive (tribal) government launches a process to escalate and claim governance over non-member lands and citizens it ceases to be purposive in form, as intended by Congress in the Indian Reorganization Act of 1934. All other American citizens have a (representative) government; they should never be governed by a second, private government that affords them no voice, vote or redress.

Hobart feels unique, but we know that we are not alone in Wisconsin among local governments experiencing tribal government challenges affecting municipalities and counties—dozens of Wisconsin counties, cities, villages and towns. Hobart *may* be unique in its public and courageous actions to preserve its municipality against the avowed goal of the OTI as announced on August 15<sup>th</sup> by newly elected OTI Business Committee Chairman, Richard (Rick) Hill: “*We must vigorously reclaim our land base.*” Hobart is approximately 33% of the tribe’s alleged “land base.”

Historical reality is that the entire Oneida Indian Reservation was fully allotted by 1893, as mentioned above, and that no tribal governance was recognized by Congress or the State of Wisconsin for forty-three years until Congress federally recognized the Oneida Tribe of Indians in 1936 under the Indian Reorganization Act of 1934. During this four-decade era the Town of Hobart was incorporated in 1908 and neither federal or state government recognized any tribal government or reservation status of the lands, beyond remaining (non-land) provisions of a Treaty of 1838.

The federal district court Eastern District ruled that the Oneida Indian Reservation was fully discontinued in 1909 (*United States v. Hall*, 171 F. 214 (E.D.Wis.1909), and again in 1933 *Stevens v. County of Brown*, C.A. No. 3807 (E.D. Wis. Nov. 3, 1933). Even with federal recognition and a new tribal constitution, their tribal jurisdiction was and still *is* limited to “present confines” (*Article I, Oneida Tribal Constitution, Approved by Interior on Dec. 21, 1936*). Present confines in 1936 involved 40 acres plus 1,200 acres purchased by Congress for the Oneidas. Present confines *today* should mean lands held in trust only, as we have not found, nor been provided the legal instrument that returned full jurisdiction of the entire historical reservation boundary to the Oneida tribe of Indians. This raises serious questions as to law enforcement authority and jurisdiction for Oneida tribal police, but remains utterly ignored by the tribe and Brown County Sheriffs.

**Brown County-Tribal Service Agreement.** Most recently on May 28, 2008, in spite of repeated requests by Village of Hobart officials for information, inclusion and involvement, Brown County Executive and Board of Supervisors and OTI executed a secret (from Hobart) County/Tribal service agreement specific to land within the Village of Hobart. The service agreement incorporated inappropriate law enforcement jurisdictional components better served by a mutual aid agreement, into a service agreement (payment in lieu of taxes). The most egregious component included an imaginary new 1,700-acre boundary line inside municipal boundaries of Hobart that arbitrarily removed primary Hobart police department authority from this area, transferring primary law enforcement response to the Oneida Police Department. The Village is in state court on this matter at this writing (*Village of Hobart v. Brown County and Oneida Tribe of Indians*, Case No. 08-CV-1313, Judge Hammer).

**A Municipality Under Siege.** Over the past ten years the OTI has intentionally and methodically: 1) claimed ownership of an abandoned railroad, denying Hobart residents easements for access or infrastructure to their properties; 2) obstructed an industrial park project wherein the Village expended over 3 million dollars to discover the tribe had acquired 75% of the park's land base and refused to develop it; 3) the OTI spent 3.1 million on a 60' wide L-shaped strip of property to intentionally prevent Village infrastructure from reaching the development site for which the Village expended 6 million dollars to create a commercial area in Hobart; and 4) is vigorously pursuing the "crown jewel" of the Village—the 27-hole Thornberry Creek Golf Course & Club nestled in the center of the Village's most valuable property tax base. (See attached map for aforementioned items 1 through 4). The plan is to place the golf course acreage into federal trust, and put a casino and hotel on the site to establish a destination area. Such a substantial commercial transformation of use in a high-quality, quiet neighborhood will be devastating to future market value and property tax.

**The dilemma facing Hobart puts a purposive (private) tribal government on an intentional collision course with a representative (municipal) government.** This is an unnecessary coup but exists for the lack of state agency support for this and similarly affected subdivisions, strategic tribal political funding contributions to elected officials, and the tribe's propaganda machine that has caused neighboring local governments to remain non-responsive as well.

**Federal Court Rulings Ignored.** A pattern occurring within Wisconsin governments and state agencies, as well as across the country, is to trivialize or outright ignore substantial U.S. Supreme Court rulings, most of which were ruled by a unanimous High Court. Such is the political clout of increasingly wealthy and powerful tribes. The force and effect of the following U.S. Supreme Court rulings is unambiguous and consistent:

*Strate v. A-1 Contractors* 520 U.S. 438 (1997) "Tribal courts may not exercise jurisdiction over non-members."

*Atkinson v. Shirley* 532 U.S. 645 (2001): "A tribe may not tax a non-member."

*Nevada v. Hicks*. 533 U.S. 353 (2001): "A state's jurisdiction does not end at a reservation boundary. Indian reservations are part of a state's territory."

City of Sherrill v. Oneida Indian Nation 544.U.S. 197 (2005) “Well-settled communities have a justifiable expectation to not be parceled into tribal sovereign “patches.”

Even more recently, in addition to ignoring 1909 and 1933 federal district court rulings, the Oneida Tribe of Indians trivializes and ignores a March 28, 2008 ruling by Judge William Griesbach, wherein the Oneidas sued the Village of Hobart and lost. Judge Griesbach affirmed full *in rem* authorities of the Village of Hobart over fee lands located within the historical boundaries and owned either by the Tribal government or tribal members. Oneida Tribe of Indians v. Village of Hobart (Case No. 06-C-1302)

**State Supreme Court Rule Petition 07-11.** Also unhelpful to peaceful coexistence between tribes, local governments and Wisconsin citizens is a recent action of the Wisconsin State Supreme Court. For the sake of “judicial efficiency” alone, and with absolutely no consideration of impact upon Wisconsin court litigants, the Wisconsin Supreme Court passed Rule Petition 07-11 on June 25, 2008, providing opportunity for tribal courts to arbitrarily remove cases from state court into tribal court. By a mere thread and an eleventh hour, two-page letter, the Village of Hobart was able to get a tiny deference into the rule, that actually requires a party’s consent before a case is transferred out of a state court and into a tribal court. (See letter by Stafford Rosenbaum, June 24, 2008 enclosed). Absent Hobart’s alert but last-minute request, Rule Petition 07-11, quietly shepherded by tribal and state judges, completely ignored the legal rights of Wisconsin residents, would have denied the opportunity of trial by jury, and would, and likely *will* have had profound affect on county and municipal courts.

**Statewide Issues.** On each and every Indian reservation within Wisconsin, there is a predominantly non-Indian population. The 2006 enrolled tribal population in Wisconsin was 47,385, or less than 1% of the Wisconsin’s population. This small population among the eleven tribes received \$119 million in federal funds in 2006 alone, to supplement the \$1.5 billion received in 2005 from the tribal gaming monopoly in this state. And yet less than 1% of the State’s population participates in these private governments that are economically and politically cannibalizing their host communities.

Private tribal government actions affect hundreds of thousands of Wisconsin residents, but this subject remains the unspoken Elephant in the State’s legislature, courts and agencies. This silence portends no solutions and only escalating conflict. Just a few of the larger issues include:

**Environment:** EPA grants Treatment Similar to States (TSTS) that delegates tribal authority over water, air and all matters that fall under the five congressional environmental acts (Clean Air, Clean Water, FIFRA, etc.). TSTS should read Treatment *Superior* To States because that is the net effect for governments serving less than 1% of the State’s population.

**Law enforcement:** Concerted efforts are being exerted nationally and statewide to rescind or otherwise neutralize Public Law 280.

**Gaming Revenue:** 2006-2007 Tribal Gaming Revenue Appropriations funded 36 projects for a total distribution of \$26,418,700. Of this figure, 20 projects (\$9,163,100) were directly funded to tribal-only projects; 13 projects (\$7,884,400) were natural resource fundings incorporating tribal government projects; and 3 (\$9,371,200) were tourism-related, also available for promotion of tribal gaming. These are the funds derived from State Compacts to offset the impacts of tribal gaming occurring to Wisconsin residents and local governments. **Local governments received zero**, but take the direct economic loss through property tax erosion and redirection of disposable revenue into tax-exempt slot machines. With State appropriation distribution of compact funds such as just described, the greatest share of gaming revenue paid to the State of Wisconsin merely passes through state books and goes directly back to tribes, leaving local governments twisting in the wind.

**Solutions.** Truly this letter is not intended to burden you, but to ask your guidance and request a forum, specifically an Attorney-General sponsored study group that can begin to address just a few of the issues described herein. The Village of Hobart would be most interested in having a Hobart representative appointed to such a group. Our letter is not a full index of all tribal-local government issues, but it is a beginning. Just your willingness to permit a couple of tribal topics on your May 1<sup>st</sup> Listening Session in Green Bay, Attorney General Van Hollen, was a breath of fresh air. Surely we can do more for Wisconsin citizens. We stand at your service and await your response.

Most Sincerely,

As instructed by Village of Hobart Board of Trustees at their meeting of May 6, 2008.

Elaine D. Willman,  
Village Administrator