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Letter from J. Reuel Armstrong to Representative Burdick Regarding the Three Affiliated Tribes Tribal Elections, June 22, 1956

J. Reuel Armstrong

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

In reply refer to:
MC-42

JUN 22 1956

Tribal Elections

My dear Mr. Burdick:

We have delayed replying to your letter of May 3, 1956, until our memorandum opinion on the subject of the use of absentee ballots in elections to amend tribal constitutions should be completed and be available for your use.

The problems which you have raised in connection with tribal elections on the Fort Berthold Reservation are not unique to that locality. It is a close question of law whether absentee balloting may be permitted in an election on a reservation where the governmental constitution of the Indians involved expressly provides that suffrage is extended only to Indians who present themselves at the polling places. We never lightly overrule opinions of prior Solicitors, but, in this case, we have felt constrained to modify the Solicitor's Opinion of July 18, 1952 (M-36141) which, while correctly finding that non-resident Indians had a right to vote in person in an election called to amend constitutions, denied non-resident voters the privilege of absentee balloting even though the original constitution had been adopted under rules permitting absentee balloting.

We are enclosing a copy of our recent opinion (M-36346) dated June 8, 1956, holding that non-resident members of the Blackfeet Tribe may vote by absentee ballot at elections to amend their constitution, and our opinion (M-36350) dated June 15, 1956, which finds no authority in the Secretary of the Interior to call elections for tribal officers for tribes incorporated under the Indian Reorganization Act where the Tribal Constitution does not so provide. This holding is equally applicable to the Three Affiliated Tribes as to the Blackfeet Tribe. We hope that the use of absentee balloting will permit the prompt amendment of the Fort Berthold Tribal Constitution. We have also recommended that their tribal constitution be amended to permit the Secretary of the Interior to call tribal elections in case the tribal officials charged with this responsibility fail to do so. If this amendment is adopted, the problem of calling elections, to which you have called our attention, will be resolved.

You have enclosed "excerpts" from a letter to Senator Richard L. Neuberger dated April 28, 1956, written by a member of the Three Affiliated Tribes. The letter refers to the requirement of the act of June 15, 1935 (49 Stat. 378) as "this 30% nonsense." We call attention to the questionable use of the words "approved by the Bureau" in his letter, for one of the purposes of Congress in adopting the Indian Reorganization Act was to limit the occasions when the Secretary could "approve" or "disapprove" action taken by tribal governmental representatives. The letter also imputes to the Secretary of the Interior a broad authority to call tribal elections for councilmen. We are unable to find statutory grounds to share this positive confidence in Secretarial authority to call such tribal elections.

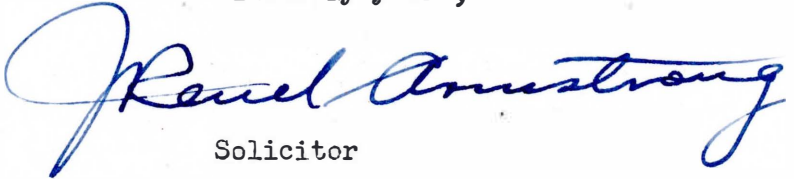
In regard to the question which you raised as to the authority for payment of salaries for Fort Berthold tribal officers, we believe that the question is answered by reference to Article VI, Section 5(c) of the Constitution and Article II "Salaries" of the Bylaws of that tribe which specifically covers the subject in the following language:

"(c) * * * to make expenditures from available tribal funds for public purposes of the tribe, including salaries or other remuneration of tribal officials or employees. Such salaries or remuneration shall be paid only for services actually rendered. All expenditures from the Tribal Business Council Fund shall be by resolution duly passed by the Council to such effect, and the amounts so paid shall be matters of public record at all times."

"Article II-Salaries. The Tribal Business Council may prescribe such salaries for council members and tribal officers appointed by the council as it deems advisable, from such funds as may be available, provided that no compensation shall be paid to any tribal officer out of any tribal funds except by resolution duly passed and approved by the council, and subject to popular referendum the same as other powers of the council, and further provided that no compensation shall be paid to any tribal officer out of tribal funds under the control of the Federal Government except upon a resolution stating the amount of the compensation and the nature of the services rendered, and said resolution shall be of no effect until approved by the Secretary of the Interior."

If we can be of further assistance, please do not hesitate to call on us.

Sincerely yours,

A handwritten signature in blue ink that reads "Paul Armstrong". The signature is written in a cursive style with a large, looping initial "P".

Solicitor

Hon. Usher L. Burdick

House of Representatives

Enclosures