

COEUR D'ALENE TRIBE

NEWS RELEASE

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ATTORNEY GENERAL WEIGHS IN ON HOUSE BILL 500

PLUMMER – The Idaho Attorney General released a preliminary legal analysis that indicates House Bill 500 is consistent with the Idaho constitution and does not violate other Idaho laws.

The opinion was a response to an inquiry made by the Chairman of the House Judiciary and Rules Committee Rep. Jim Clark, Hayden-R, who requested an Attorney General opinion to address “contentions as to the possible unconstitutionality of the legislation” being made by opponents of the bill.

“It’s perfectly clear,” Clark said. “I think the A.G.’s analysis is right on the mark - all the constitutional issues just go away. Now let’s talk about real issues, let’s try to get some public safety for everyone living on Indian reservations.”

The Coeur d’Alene Tribe is proposing legislation that would give state certified tribal police officers the authority to enforce state laws on reservations against anyone breaking them and send them to state court.

“It’s unacceptable for someone to escape justice because qualified tribal police officers can’t make an arrest simply because of a person’s race,” Clark said. “The State and Indian Tribal Cooperative Law Enforcement Act would solve the problem.”

The bill is awaiting a public hearing in the Judiciary Rules Committee.

“We applaud the efforts of Chairman Clark to obtain this important legal answer to the alleged “constitutional problems” that have been recklessly thrown around by opponents,” said Coeur d’Alene Tribe Chairman Chief Allan.

“The Attorney General’s opinion confirms what we knew from day one,” said Allan, “that many of the opposition’s arguments against HB500 were simply unfounded and based on misguided rhetoric.” Allan further stated, “this opinion puts to bed the “boogeyman” claims about this bill and will allow those in the legislature who have been hesitant because of the about this bill to now more confidently stand up for what is right-public safety for all Idahoans living on reservations.”

Opposing groups have declared HB 500 violates the constitution by undermining the county sheriffs’ authority to enforce state laws in Idaho.

“HB 500 does not attempt to displace county sheriffs’ authority to enforce state law,” wrote Assistant Chief Deputy Attorney General Brian Kane in a February 23, 2010 letter. “Rather, consistent with the Legislature’s authority to prescribe “peace officers status, it expands the methods by which tribal law enforcement can secure such status.”

Kane goes on to write that HB 500 gives the sheriffs’ discretion as whether to enter into a cooperative agreement. The bill gives sheriffs the ability to enter into cooperative agreements with tribes.

“It doesn’t force the sheriff to do anything,” Allan said. “If a sheriff doesn’t want to cooperate, the citizens living on Indian reservations will still have some method of recourse.”

The Attorney General also addressed another argument against House Bill 500, which is that the act would deprive non-tribal citizens of their right to a representative government, violating the U.S. Constitution and the Idaho Constitution.

“Nothing in HB 500 addresses, much less diminishes that right,” Kane wrote. “I note further that, to the extent a claim of infringement on the right to a representative government may be advanced under Article 1, Section 19 or any other provision of the Idaho Constitution, the legislation – if adopted by the Legislature and not vetoed by the Governor—will have been authorized by Idaho citizens’ duly elected officials.”

The opposition has said that HB 500 would create a “de facto” sheriff that was not accountable to anyone, but the Attorney General disagreed with those views.

“The very definition of “peace officer” thus negates the reasonable likelihood of ‘de facto’ deputy sheriff status ever existing,” Kane wrote.

The opposition’s argument of that tribal police would have no accountability to the sheriff was also refuted by the Attorney General’s office.

“Peace officers shall have all authority and duties given by Idaho law to peace officers of the state of Idaho” subject to any limiting terms in an agreement or certain other officer-specific disqualification grounds,” Kane wrote. “Article IV, Section 20 does not require tribal peace officers to be under the authority of the state police or local sheriff or accountable through a chain of command to any publicly elected official.”

Also, the Act creates another layer of accountability because the Tribes would be responsible for carrying insurance and be responsible for liability issues. It will hold tribal police agencies legally accountable, as a tribal officers accused of violating a non-Indians due process rights would be subject to the state and federal courts, while the Tribe would be held responsible.