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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Rural Economic Development and Rural Affairs...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Record of Committee Proceedings

Committee on Rural Economic Development and Rural Affairs

Assembly Bill 95

Relating to: permits issued by the Department of Revenue for the retail sale of alcohol beverages.

By Representatives Steineke, Nygren, Jacque, Ballweg, Knudson, LeMahieu, Litjens, Pridemore, Spanbauer and Ziegelbauer; cosponsored by Senators Lasee, Cowles and Grothman.

April 15, 2011

Referred to Committee on Rural Economic Development and Rural Affairs.

May 18, 2011

PUBLIC HEARING HELD

Present: (14) Representatives A. Ott, Steineke, Petrowski, Murtha, Tauchen, Ripp, T. Larson, Rivard, Danou, Vruwink, Jorgensen, Radcliffe, Roys and Ringhand.

Absent: (0) None.

Excused: (1) Representative Krug.

Appearances For

- Jim Steineke — Representative, 5th Assembly District
- Dave Dillenburg, Hobart — Village of Hobart
- Elaine Willman, Hobart — Village of Hobart
- Ed Kazik, Hobart — Village of Hobart
- John Berggren, Hobart — Peaceful Neighborhood Association

Appearances Against

- Tehassie Hill — Councilman, Oneida Tribe
- Becky Webster — Oneida Tribe
- Nan Nelson, Green Bay — Green Bay Area Chamber of Commerce
- Bobbi Webster, Oneida — Oneida Golf Enterprise Corp.
- Jim Tenuta, Madison — Oneida Tribe

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

- Joe Strohl, Madison — Menominee Indian Tribe

Registrations for Information Only

- None.

Erin Ruby
Committee Clerk

Vote Record

Committee on Rural Economic Development and Rural Affairs

Date: 10/5/11

Moved by: Steineke

Seconded by: Tauchen

AB 95

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage
 Adoption
 Confirmation
 Concurrence
 Indefinite Postponement
 Introduction
 Rejection
 Tabling
 Nonconcurrence

Committee Member

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Alvin Ott, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jerry Petrowski	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative John Murtha	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gary Tauchen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Keith Ripp	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Scott Krug	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Larson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Amy Sue Vruwink	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Andy Jorgensen	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mark Radcliffe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Janis Ringhand	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Steve Doyle	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 7 5 3 -

Motion Carried

Motion Failed





May 17th, 2011

To: WI State Legislators

RE: State Issued Liquor License for Oneida Golf Enterprise Corporation

The importance of having a liquor license issued from the State of Wisconsin to Thornberry Creek at Oneida is paramount to our success. Our ability to serve alcohol is vital to retaining business, as well as, attracting new business to our course and clubhouse. Few, if any, other business in the state are in the same predicament with local elected leaders as Thornberry Creek at Oneida Golf Course is currently in. While we appreciate the process that is established for Thornberry Creek to be issued a liquor license by our local government, we would ask that you consider our special circumstance in issuing the license, as you did two years ago, again.

Thornberry Creek at Oneida has grown in revenues over the past few years and those revenues have helped boost the local economies of Hobart, Oneida and Green Bay including providing jobs in a time when they are sorely needed. Our future looks bright as Thornberry Creek has grown to employ over 100 people on a yearly basis and is a source of pride for our local community as we are surrounded by over 200 homes on our golf course. The loss of a liquor license would also affect the over 100 people employed, as well as drive property values down in homes surrounding the golf course as the business would be forced to close without a liquor license issued from the State. Golf outings, weddings, and the numerous charity events we host would have to find another venue and our employees, other jobs.

Thornberry Creek at Oneida has proven to be a local asset for the Village of Hobart and its residents. We only look to work together with the local and state governments in an efficient, proactive and cooperative way as we have for many years and hope to for years to come.

Thank you for your attention to this most important matter.

Sincerely,

Mark Becker, PGA
Director of Golf
Thornberry Creek at Oneida

Chris Vokracka
Food & Beverage Director
Thornberry Creek at Oneida



**TESTIMONY IN OPPOSITION OF AB95
ASSEMBLY COMMITTEE ON RURAL ECONOMIC
DEVELOPMENT AND RURAL AFFAIRS
PRESENTED BY
RONALD "TEHASSI" HILL JR.
COUNCIL MEMBER**

ONEIDA TRIBE OF INDIANS OF WISCONSIN

May 18, 2011

Mr. Chairman and Members of the Committee:

As you will recall, in 2008, the economy was in a free-fall. The stock market crashed, and people were losing jobs at an unprecedented rate. That was the year that the Oneida Nation purchased the Thornberry Creek Golf Course for the sum of \$10.5 million.

The Golf Course was not a profitable business; the previous owner of this facility was in bankruptcy, and the property was in foreclosure. Oneida wanted to make Thornberry Creek viable again by creating a partnership with our hotel and gaming business. In the process of purchasing the property, and creating a new synergy between our hospitality businesses and the golf course, we thought we could preserve the jobs of 100 people, mostly non-tribal members, who would have joined the millions who were losing their jobs in those very tough economic times.

We did exactly that. Others who will testify on this issue will tell you about the success that is today Thornberry Creek Golf Course.

Despite the success that is now Thornberry Creek, it's important to emphasize that the Village of Hobart fought our purchase of the property every step of the way. First, they placed restrictive covenants on the property that they thought would deter us from wanting to buy the property. We moved forward with the purchase, agreeing to keep the property as fee land, which means we pay property taxes and will continue to do so as long as we own the property. We agreed to use the property consistent with village zoning, and finally we agreed to a limited waiver of sovereign immunity so the Village could enforce zoning laws on the property.

At this point you would think that under those terms everyone would be happy. The golf course would remain open, jobs would remain safe, property taxes would be paid and village zoning laws would be enforced. That was not the case. Despite this, the Village continued to object to the sale of the golf course to the Tribe in both bankruptcy court and federal district court; and fortunately, they lost.

This brings us to the issue of the liquor license. The question here is not whether the Thornberry Creek Golf Course qualifies for a liquor license under the parameters established in Chapter 125 of the statutes. Clearly it does qualify. The issue here is whether the conditions imposed by the Village on the Tribe in order to obtain liquor licenses are fair, reasonable or even legal.

In this context, I want to stress to you that if you do repeal this provision of state law, it could very well lead to the closure of the golf course. If that happens, the value of the property will be diminished, and that of surrounding properties, and the Village could lose property tax revenue. It could also mean the loss of jobs because without a liquor license, the financial viability of the golf course would be in serious jeopardy, and it would surely contribute to more litigation.

In 2009, Thornberry Creek Golf Course applied for and received one-year liquor licenses from the Village, but only because the Tribe entered into an escrow agreement and deposited storm water assessments for trust lands into an escrow account. Understanding this escrow agreement is critical to understanding the issues regarding the liquor licenses. As you can see from the escrow document you now have before you, the Village conditioned the issuance of the liquor license on the Tribe depositing \$106,816 into an escrow account.

That sum of \$106,816 is equal to the amount of storm water assessments the Village was trying to collect from the Tribe on land owned by the United States and held in trust for the Oneida Tribe. It's important to point out and emphasize the assessments the Village was trying to collect, and is still trying to collect, are not on the golf course. As I stated, the golf course is fee land, not trust land. We pay property taxes and assessments on the golf course. We're talking about the Village attempt to collect assessments on separate parcels of property that are completely unrelated to the golf course and, again, held in Trust by the United States. Additionally, the escrow document requires for the Tribe to make additional payments annually to the escrow account as a condition for granting renewal of the liquor license to the golf course.

The Village insisted upon an escrow agreement as a means to press two claims, both of which are troubling. The Village's first claim is that it can force the Tribe to pay storm water assessments levied against trust land owned by the United States, even though the Village's own ordinance makes the property owner, i.e., the United States, responsible for payment.

In regard to this claim, the Oneida Tribe strongly maintains that the Village does not possess the authority to impose storm water assessments on Trust property that is separate from the golf course. In fact, two days after the escrow document was signed, in March, 2009, Oneida received a determination from the regional office of the Bureau of Indian Affairs that the storm water assessments constitute a tax that may not be imposed by the Village on land held in trust by the United States. The BIA then notified the village it should terminate further collection action.

The Village ignored that and in December 2009 billed the Tribe for storm water assessments on Trust land. After that, the Tribe was left with no choice but to initiate litigation in the Eastern

District of Federal Court for a declaration that the trust lands are not subject to the storm water assessments. We did so in February of 2010.

After this suit was filed, and after the BIA determined storm water assessments constituted an impermissible tax, the Village filed a claim in court in which it alleged that the federal government should be liable for payment of the storm water assessments under the Clean Water Act.

The federal government moved to dismiss the Village's claim and just recently the federal court did just that. The court ruled that the Village couldn't pursue its claim because the "question whether the government should be liable [under the Clean Water Act] has never been presented to any federal agency." The court has now stayed proceedings in the case to allow the Village to present its claim for payment to the United States, and to pursue the appropriate administrative remedies for seeking payment.

To recap the Village's actions regarding its first claim: the Village's ordinance makes property owners responsible for payment of storm water assessments. In the case of trust land, the property owner is the United States. But the Village did not seek payment from the United States, or follow the appropriate procedures for filing a claim against the United States. Instead, the Village attempted to force the Tribe to pay the assessments by threatening to withhold liquor licenses. Only after the Tribe filed a lawsuit, and the Court dismissed the Village's claim against the United States, has the Village initiated the procedures for seeking payment from the United States.

Mr. Chairman and Members of the Committee, I remind you that we're talking about a liquor license for a golf course that employs 100 people. The financial viability of this golf course is dependent on having a liquor license.

The fact that the Village has tied the issuance of that license to collection of storm water assessments on trust land -- an issue unrelated to the lawful operation of the golf course -- is wrong. In effect they are holding the liquor license hostage in order to test legal theories that challenge Tribal sovereignty, legal theories that have questionable merit, and we strongly believe will be discredited in a court of law. I have my view on why the Village has pursued this path, but I will hold them in reserve. But you may want to ask them questions yourself.

The Village's second claim is that it can condition issuance of liquor licenses on the Tribe's payment of the storm water assessments, even if a court determines that the Village doesn't have the authority to impose the assessments, and the assessments are therefore not owed by any party. In the words of the escrow agreement, the Village believes that it "may lawfully condition the issuance of liquor licenses to OGEC on the payment of storm water assessments, regardless of whether or not they are legally owned by any person or entity...."

Why, you ask, would a court ever conclude that a municipality may condition issuance of licenses on payment of money which is not owed? Well, we asked the same question when this document was being negotiated. The Village's lawyer insisted that such an outcome is possible because liquor licensing is discretionary. In other words, the Village believes that it has the discretion to charge the Tribe more than any other liquor license applicants, and that the Village's liquor licensing authority can be used as a club to collect money that is not owed.

In the end, we agreed to the inclusion of this provision in the escrow document based upon our assessment that it was extremely unlikely that a court would ever come to the conclusion that the issuance of liquor licenses could be conditioned on the payment of money not legally owed. This is because Chapter 125 of the statutes requires that all license fees be uniform, and there are no statutes or case law supporting the Village's position. In fact, the relevant case law dictates that a municipality cannot condition issuance of licenses on payment of monies not owed to the municipality, and there are obvious equal protection issues.

To date the Village has not asserted its claim that it can condition issuance of licenses on payment of amounts not due and owing in any judicial forum. It could be that they have reconsidered the viability of the claim. But under the terms of the escrow document, they still reserve the right to do so.

Although we strongly disagree with the Village's claims regarding its liquor licensing authority, we signed the escrow agreement because we needed liquor licenses and at the time there was no alternative but to obtain the licenses from the Village. We had just purchased the golf course and spring was fast approaching and the golf course had obligations, such as hosting weddings and golf leagues, which require us to have the ability to serve alcohol in order to meet those obligations. We also knew that we could sign the documents without compromising our legal position on issues raised in the document, and that the Village's legal claims would ultimately be judged in court.

At present we are operating the golf course solely under the liquor licenses granted by the State. We stopped making payments to the escrow account and the Village has declined to renew the licenses. We stopped making those escrow payments for several reasons. First, the State granted us relief by granting us licenses. Additionally, the Village's convoluted legal claims guaranteed that the ultimate resolution to issues raised in the escrow document could require years of litigation, the expenditure of hundreds of thousands of dollars in legal fees and the commitment of potentially hundreds of thousands more in escrow fees.

Once again, Mr. Chairman and Members of the Committee, I remind you that we're talking about a liquor license for a golf course that employs 100 people. The financial viability of this golf course is dependent on having a liquor license. The Village of Hobart has the power to grant that license, a power bestowed to it by the State of Wisconsin under Chapter 125 of the statutes. The Village of Hobart misused that power by placing unreasonable and unlawful conditions on the granting of that license. Since Wisconsin courts have held that liquor licensing is a matter of statewide concern, it is entirely appropriate for the legislature to deem that Department of

Revenue can issue such licenses, as it has in other instances. That's why the legislature did the right thing when it passed the law this bill would repeal.

To those of you who might favor passage of this bill on the grounds that the alternative licensure procedure was created by an amendment to the state budget and that the issue was never given a public hearing, the introduction of this bill, and the hearing now, should remedy that concern. So, I ask you now to base your decision on whether this bill should pass on the case that we have made which is that the Village has not treated our liquor license application as it would any other, and the conditions it has placed on the granting of that license are unreasonable and unlawful as well

In closing, I feel it's appropriate to remind you this is not the first case of policy being implemented as part of the state budget. In fact, the Village of Hobart was granted village status through an amendment to an earlier state budget and that amendment was offered by the former Republican Speaker of the State Assembly. If consistency or precedence were a rule that the legislature must abide by then this bill would include a provision repealing the village status of Hobart as well.

Thank you for your time.



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Web www.titledown.org

**Testimony of Nan Nelson, Green Bay Area Chamber of Commerce
In opposition to AB-95
May 18, 2011**

Mr. Chairman and members of the Committee:

Thank you for allowing me to testify on this piece of proposed legislation.

My name is Nan Nelson. I am executive vice president of the Green Bay Area Chamber of Commerce. The Chamber is a business association in the greater Brown County area with 1200 member businesses. As such, we applaud the Oneida Nation for taking the bankrupt Thornberry Creek golf course and, by investing \$10 million, restoring it to successful operation.

We are therefore opposed to AB-95.

This bill repeals a provision in the last state budget, 2009 Wisconsin Act 28, which requires the Department of Revenue to issue retail beer and intoxicating liquor permits to American Indian Tribes who meet certain criteria. AB-95 would also specify that any permits issued under the existing law become void.

In practice, this law was used by the state to grant liquor licenses to Thornberry Creek Golf Course in our community, an establishment owned by the Oneida Tribe of Indians, when the local Village of Hobart refused to grant such licenses under terms and conditions that would normally apply to any similar type of business.

If I may describe it in layman's terms, granting of this license became a skirmish in the much larger ongoing war between Hobart and the Oneidas. As others will describe to you, the license was withheld by Hobart in order to extract concessions from the tribe on other unrelated issues.





In the normal course of business, our Chamber has always taken the position that items of non-fiscal policy should not be included in the state budget. I know that some of the sponsors of AB-95 have signed on for that same reason. However, it's too late for that. We are now two years down the road. The golf course is operating successfully, employing hundreds of people, observing the local zoning laws and even paying property taxes to the Village of Hobart. Rescinding the liquor licenses now would put it out of business. No liquor license: no jobs, no tax base.

Perhaps Hobart is willing to forego the tax revenue and jobs, but why should our schools, our county and our technical college have to suffer the loss of revenue? Why should hundreds of residents have to lose their jobs? Why should the state have to lose the income and sales tax revenues these jobs would produce and have to bear the cost of more people on unemployment, more people on medical assistance? All to strike a blow in a war we want no part of.

To those who say it's a matter of principle, and all such policy passed as part of a budget bill should be overturned, we say consider people first. Consider jobs first. As we still struggle to come out of the Great Recession, is it really worth it to throw away these jobs, this tax base, and these families, just to make a point?

If you support Governor Walker's goal of creating 250,000 jobs in Wisconsin, as we do, why would you wish to begin that effort by destroying good paying jobs? Business investment dries up in a state with legal and regulatory uncertainty. If this law is enacted, what will we tell the next prospective \$10 million investor, afraid that his or her business could be destroyed in a moment, just to score a political point?

In closing, we once again respectfully request that you oppose AB-95. Short of that, to preserve the principle without causing as much damage, consider withdrawing **DOA** licensing power without revoking the permits it issued in the past.

Thank you again for your consideration.



Resolution No. 2011-12
VILLAGE OF HOBART
RESOLUTION TO ISSUE LIQUOR LICENSE

File on bill

WHEREAS, the Oneida Tribe of Indians of Wisconsin ("Tribe") purchased the Thornberry Creek Golf Course effective January 1, 2009 and sells alcoholic beverages at that location.

WHEREAS, the Village, pursuant to Ordinance 5.509, may not issue a liquor license to an applicant or the title owner of the premises if either "fails to pay personal property tax or real estate tax or who owes an unpaid delinquent personal property tax, real estate tax, room tax, special charge for current services, special assessments, municipal court forfeiture, parking ticket, utility bill, utility fee, ambulance bill, hazardous material spill response charge, or inspection fee to the Village."

WHEREAS, in the past, the Tribe has claimed that it is not obligated to pay storm water utility fees on trust property (the "Fees") and the Village has claimed that the Tribe or the United States, as title holder to the land, does have such an obligation.

WHEREAS, the issue of whether or not the Tribe or the United States owes the Fees for trust parcels is currently the subject matter of a lawsuit pending in the Eastern District Court of Wisconsin, Case No. 10-CV-00137-WCG.

WHEREAS, the Village of Hobart has issued liquor licenses to the Tribe in the past and desires to do so in the future.

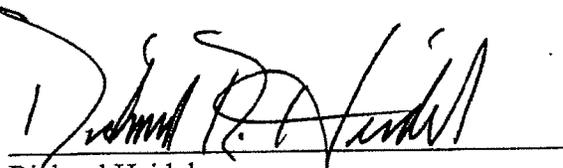
WHEREAS, the Village does not wish to have the dispute relating to the Fees impact the ability of the Tribe to obtain a liquor license, from the Village.

NOW, THEREFORE, it is hereby resolved as follows:

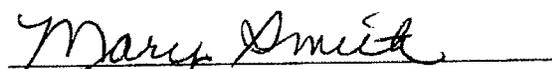
Should the Tribe, or any of its subdivisions, or agents, including Oneida Golf Enterprises, apply for a liquor license from the Village, the Village:

- a. Will not withhold the issuance of the license because the Fees are not paid nor will it require payment of the Fees into escrow, as agreed to by the Tribe in the past, until and if there is a judicial determination that the Fees are in fact owed;
- b. Will process the application in the same manner it processes all other liquor license applications.

ADOPTED this 24th day of May, 2011.

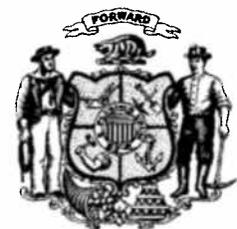

Richard Heidel
Village President

ATTEST:


Mary Smith, Village Clerk



WISCONSIN STATE LEGISLATURE



May 25, 2011
Page 3

Todd Cullen
Georgia Pacific
1919 South Broadway
Green Bay, WI 54304

Re: Assembly Bill AB-95

File Only

Dear Chamber:

Our office has been retained by the Village of Hobart in regard to a statement which was submitted, both in writing and verbally, by Nan Nelson, on behalf of the Green Bay Area Chamber of Commerce, to the Committee on Rural Economic Development and Rural Affairs, at a May 19, 2011 hearing in Madison. Ms. Nelson spoke against the passage of Assembly Bill AB-95, introduced by Representative Steineke and nine others and co-sponsored by Senators Lasee, Cowles and Grothman, which proposes to repeal the special legislation which allows the Oneida Tribe of Indians of Wisconsin to obtain liquor licenses directly from the State rather than from local municipalities. A copy of that testimony is attached hereto as Exhibit A.

The Village was shocked and dismayed by the Chamber's statements to the Committee for a variety of reasons. Most significantly the statements demonstrate a lack of due diligence and disregard for accuracy in terms of both the factual background and the purpose of this legislation. Additionally, the statements evidence an apparent desire to choose sides between two of the Chamber's consistent supporters and contributors, rather than highlight the significant economic development and other benefits they have each brought to this community. The Village invites the Chamber to foster, rather than discourage, future cooperation between the Village and the Tribe. The disrespect exhibited toward the 13 legislators involved in sponsoring the Bill was no less surprising.

I write to provide the Chamber a reasonable opportunity to correct the record. Specifically, the Village hereby demands that the Chamber correct all of the factual errors contained in Exhibit A. The corrections must be in writing and transmitted to every member of the above-referenced Committee. A list of the Committee members is attached hereto as Exhibit B.

Although it is the Village's position that there are numerous errors in the written document and oral testimony, I direct your attention only to the most egregious.

1. The Chamber stated:

"[T]he local Village of Hobart refused to grant such licenses under terms and conditions that would normally apply to any similar type of business."

This statement is patently false. The Village's ordinances prohibit the issuance of a liquor license if the applicant or the property owner "fails to pay personal property tax or real estate tax or who owes any unpaid delinquent personal property tax, real estate tax, room tax, special

charge for current services, special assessments, municipal court forfeiture, parking ticket, utility bill, ambulance bill, hazardous materials spill response charge, or inspection fee to the Village." Village Ordinance, Section 5.509(C) and (D).

The Village enforced the above ordinance and nothing more. The Village did not require the Tribe to do anything other than exactly what it requires of every other applicant and property owner within the Village.

When the Tribe purchased the golf course, it applied for a liquor license which was promptly granted. Attached as Exhibit C is a copy of the Board Minutes for March 23, 2009. The minutes confirm the motion to "approve the draft escrow agreement for accommodating disputed storm water fees owed by the Oneida Tribe of Indians..."¹ Thereafter the initial license for the Tribe was issued for the period of March 27, 2009 to June 30, 2009. This license is attached as Exhibit D.

Pursuant to the Village's ordinances, all liquor licenses expire on June 30th and must be renewed on an annual basis. The Tribe requested to have its original liquor license renewed for the period of July 1, 2009 through June 30, 2010. Attached as Exhibit E is a copy of the Minutes of the June 2, 2009 Village Board meeting, in which the application for a liquor license by Thornberry at Oneida, as well as three other establishments, was considered. The Board unanimously approved the issuance of the license for all four applicants, including the Tribe for the golf course. Specifically, a motion was made "to approve all four applications and issue licenses in accordance with the ordinances, motion carried, none opposed." Attached as Exhibit F is a copy of the renewed liquor license thereafter issued to the Tribe for the year ending June 30, 2010.

The above confirms that when the Tribe sought a liquor license from the Village, the applications were processed, and the licenses were in fact issued, in accordance with the Village's ordinances, subject to no other terms or conditions.

2. The Chamber also claimed:

¹ It should be noted that at the time the Tribe obtained its first liquor license for the golf course, it owed a considerable amount of delinquent taxes, fees and assessments. The Village, just as it would for every other applicant, required the payment of those past due amounts prior to the issuance of the license. The Tribe conceded it owed and paid all of these amounts except for the storm water utility fees for trust parcels. The Village, in order to make sure that the Tribe did not go a single day without a liquor license, suggested the Tribe pay the disputed amounts into escrow instead of requiring the Tribe to make payment to the Village under protest. Pursuant to the terms of the Escrow Agreement, the Village cannot receive those funds absent a judicial determination that they are in fact owed, by either the Tribe and/or the federal government. In other words, if anything, the Village was more lenient to the Tribe, when it applied for its liquor license, than it would have been to other applicants. Pursuant to the terms of the Escrow Agreement, the Tribe can always obtain a liquor license from the Village, without paying the Village the disputed fees, as long as it escrows the disputed amounts pending a judicial ruling on the issue. Now, they no longer need to do even that, to obtain a Village liquor license, as explained infra.

"[T]he license was withheld by Hobart in order to extract concessions from the Tribe on other unrelated issues."

First, no license was withheld as explained above. Second, no concession, other than abiding by the ordinances applicable to every other liquor license applicant, was ever required.

3. The Chamber has expressly and improperly stated:

"Rescinding the liquor licenses now would put [the golf course] out of business. No liquor license, no jobs, no tax base."

This statement is false. The Village has issued the liquor licenses requested by the Tribe and there is absolutely no factual basis to make an assertion that renewal of the license would not occur in the future. The truth of the matter is that the Village has agreed to forego all of the disputed fees pending a judicial determination on that issue as confirmed in the Escrow Agreement. Now, even paying the disputed fees into escrow is no longer necessary. On May 24, 2011, the Village passed a Resolution confirming it will not require the payment of the disputed fees to the Village, into escrow, or to anyone, pending a judicial determination on this issue. The Resolution is attached as Exhibit G.

4. The Chamber publicly commented:

"If this law is enacted, what will we tell the next prospective \$10 million investor, afraid that his or her business could be destroyed in a moment, just to score a political point?"

Similarly, the Chamber has taken the position that:

"Perhaps Hobart is willing to forego the tax revenue and jobs, but why should our schools, our county and our technical college have to suffer the loss of revenue?"

These statements are inflammatory and will deter future investment in the Village if not retracted immediately. More to the point, these statements are in direct conflict with the truth. The Village has been preserving the tax base, not only for its benefit but, also the benefit of two local school districts, NWTC and Brown county, by objecting to the Tribe's pending applications to have over 3,000 additional acres placed into trust and completely off of the tax rolls. The Village has also added approximately \$15,000,000 in assessed value in new business and housing in 2010 alone.

The Village is compelled to demand these corrections because each of the above referenced statements constitutes actionable common law defamation as well as a violation of a statutory provision prohibiting actions causing injury to the Village in its reputation, trade, business or profession. Both libel and slander are forms of defamation, the distinction being that libel involves a written defamatory statement, while slander is oral. In this case we have both. The elements of a common law action for defamation are: (1) a false statement; (2) communicated by

May 25, 2011
Page 6

speech, conduct, or in writing to a person other than the one defamed; and (3) the communication is unprivileged and tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her. Pursuant to related but separate law, an organization and individual can also be found statutorily liable for injuring another in his or her reputation, trade, business or profession by any means whatsoever.

Within seven days of the date of this correspondence, please provide confirmation that the Chamber has availed itself of this reasonable opportunity to correct the libelous nature of its communications. The correction should be in written form and transmitted to every member of the Committee on Rural Economic Development and Rural Affairs. A copy should be sent to my office.

The Chamber consistently does good things for the larger community and we trust this was an error in judgment rather than a calculated attempt to misrepresent Hobart to the State. The Chamber's prompt remedial action, or lack thereof, will be the best expression of which occurred.

Very truly yours,

Davis & Kuelthau, s.c.



Frank W. Kowalkowski

FWK:kam
Encl.

cc: Village of Hobart

Resolution No. 2011-12
VILLAGE OF HOBART
RESOLUTION TO ISSUE LIQUOR LICENSE

WHEREAS, the Oneida Tribe of Indians of Wisconsin ("Tribe") purchased the Thornberry Creek Golf Course effective January 1, 2009 and sells alcoholic beverages at that location.

WHEREAS, the Village, pursuant to Ordinance 5.509, may not issue a liquor license to an applicant or the title owner of the premises if either "fails to pay personal property tax or real estate tax or who owes an unpaid delinquent personal property tax, real estate tax, room tax, special charge for current services, special assessments, municipal court forfeiture, parking ticket, utility bill, utility fee, ambulance bill, hazardous material spill response charge, or inspection fee to the Village."

WHEREAS, in the past, the Tribe has claimed that it is not obligated to pay storm water utility fees on trust property (the "Fees") and the Village has claimed that the Tribe or the United States, as title holder to the land, does have such an obligation.

WHEREAS, the issue of whether or not the Tribe or the United States owes the Fees for trust parcels is currently the subject matter of a lawsuit pending in the Eastern District Court of Wisconsin, Case No. 10-CV-00137-WCG.

WHEREAS, the Village of Hobart has issued liquor licenses to the Tribe in the past and desires to do so in the future.

WHEREAS, the Village does not wish to have the dispute relating to the Fees impact the ability of the Tribe to obtain a liquor license, from the Village.

NOW, THEREFORE, it is hereby resolved as follows:

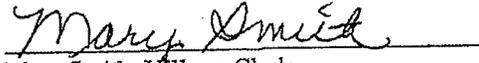
Should the Tribe, or any of its subdivisions, or agents, including Oneida Golf Enterprises, apply for a liquor license from the Village, the Village:

- a. Will not withhold the issuance of the license because the Fees are not paid nor will it require payment of the Fees into escrow, as agreed to by the Tribe in the past, until and if there is a judicial determination that the Fees are in fact owed;
- b. Will process the application in the same manner it processes all other liquor license applications.

ADOPTED this 24th day of May, 2011.


Richard Heidel
Village President

ATTEST:


Mary Smith, Village Clerk





May 25, 2011

VIA CERTIFIED RETURN RECEIPT MAIL:

Mr. Fred Monique
Interim Chamber President
Green Bay Area Chamber of Commerce
300 N. Broadway St., Suite 3A
Green Bay, WI 54303

Ms. Nan Nelson
Executive Vice President
Green Bay Area Chamber of Commerce
300 N. Broadway St., Suite 3A
Green Bay, WI 54303

VIA REGULAR FIRST CLASS MAIL:

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DePere, WI 54115

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Hobart, WI 54155

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Green Bay, WI 54302

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Green Bay, WI 54301

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May 25, 2011

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June 7, 2011

VIA FACSIMILE 920-431-2261

Frank W. Kowalkowski
Davis & Kuelthau, S.C.
318 South Washington Street, Suite 300
Green Bay, WI 54301

RE: AB-95

Dear Mr. Kowalkowski:

We write on behalf of the Green Bay Area Chamber of Commerce in response to your May 25, 2011 letter for the Village of Hobart concerning testimony presented by the Chamber's Executive Vice President, Nan Nelson, at a May 19 legislative hearing stating the Chamber's opposition to Assembly Bill 95.

AB-95 would repeal the law under which the Oneida Nation obtained a liquor license from the Wisconsin Department of Revenue for the Thornberry Creek Golf Course, which the Tribe purchased in 2008 when its owner was in bankruptcy, the property was in foreclosure and the jobs of its 100 employees were threatened. The Chamber opposes AB-95 because it also would void the Tribe's liquor license for the golf course, again threatening those 100 jobs and the economic benefits the entire area enjoys from the Tribe's operation of this business. Your letter disputes that premise, among other aspects of Ms. Nelson's testimony, and even threatens litigation by the Village against the Chamber for defamation and conspiracy to injure the Village in its reputation, trade, business or profession.

The Chamber takes the Village's expressed concerns very seriously and has given them careful consideration. It must, however, respectfully disagree for the following reasons.

The Chamber's executive committee reviewed and authorized Ms. Nelson's testimony, even though the Village itself is a valued member, to further the economic interests of its overall membership. Deciding to publicly advocate against the interests of a member is never easy, but conflicts between the Chamber's 1200 members are inevitable in our economic system. When the interests of one or a few members conflict with those of the larger membership, as they do with respect to AB-95, the Chamber must be able to act for the group consistent with its rules and procedures. The Chamber regrets that the Village contends this decision may represent "a calculated attempt to misrepresent Hobart to the State," as your letter suggests. That certainly was not the Chamber's intent.

The Village's specific objections to Ms. Nelson's testimony flow from its principal contention that it "did not require the Tribe to do anything other than exactly what it requires of every other applicant and property owner within the Village." The Chamber sees it differently, since the Village's contention treats land owned by the United States in trust for the Oneida Nation -- land separate from the golf course -- as if the Tribe owned the land outright. The Village concedes it required the Tribe to pay the disputed storm water fees on this trust land into escrow as a condition for granting a liquor license for the golf course. Under the circumstances, the Tribe had little choice but to agree. The Village later commenced litigation against the actual owner of the trust land, the United States government. The Village has never previously, to the Chamber's knowledge, conditioned the grant of a liquor license to one party on its agreement to pay fees owed by another.

The Village left no doubt in its own testimony to the legislative committee that it would impose the same condition if the Tribe's liquor license was presented to the Village for renewal. It was only *after* the hearing that the Village changed its position. The Village adopted a resolution on May 24, 2011 indicating that it would not require payment of the disputed fees into escrow and would process any future application by the Tribe for a liquor license at the golf course "in the same manner it processes all other liquor license applications." This resolution would seem to be unnecessary if the Village was already treating the Tribe like all other liquor license applicants.

Ms. Nelson's testimony that passing AB-95 would engender the kind of uncertainty that inhibits development and job creation was not intended to disparage or discourage the Village's efforts in that regard. The Chamber salutes Hobart for its aggressive pursuit of economic development, such as the very successful Centennial Centre. The Chamber's concern that passing AB-95 would undermine the legal and regulatory certainty that business investors seek was not directed at the Village. Indeed, Ms. Nelson's testimony is clear that the Chamber is addressing the effect of this proposed state policy, and not the Village of Hobart.

The Chamber, the Village and the Tribe share the goal of encouraging responsible economic development for the benefit of residents throughout the area. The Chamber appreciates, in this regard, the Village's invitation that it endeavor to foster "future cooperation between the Village and the Tribe." But it must object that the Village's approach to this dispute, by threatening to hold the Chamber "liable" for common law defamation and the alleged violation of Wis. Stat. § 134.01 because of Ms. Nelson's testimony, undermines that laudable goal.

The technical, legal answer to the Village's threat is that the law does not allow a governmental entity to sue for injury to its reputation. The U.S. Supreme Court noted in the most famous defamation case in history that "[f]or good reason, no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence." *New York Times Co. v. Sullivan*, 376 U.S.254,

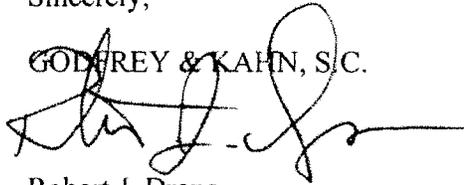
Frank W. Kowalkowski
June 7, 2011
Page 3

291 (1964) (citation and interior quotation omitted). *See* Annot., "Right of Governmental Entity to Maintain Action for Defamation," 45 ALR 3d 1315 (collecting cases).

The more immediate and practical response to the Village's assertion is that parties who seek opportunities for future cooperation, as the Chamber believes all three concerned parties do here, must sometimes respectfully agree to disagree on certain issues while seeking common ground on other issues. The Chamber believes this is one of those occasions.

Sincerely,

GODFREY & KAHN, S.C.

A handwritten signature in black ink, appearing to read "Robert J. Dreps", written over the printed name of the firm.

Robert J. Dreps

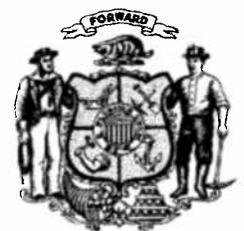
RJD:jlm

cc: Fred Monique
Nan Nelson

6442209_1



WISCONSIN STATE LEGISLATURE



Ruby, Erin

From: Ruby, Erin
Sent: Wednesday, June 08, 2011 11:09 AM
To: Rep.Danou; Rep.Jorgensen; Rep.Krug; Rep.Larson; Rep.Murtha; Rep.Petrowski; Rep.Radcliffe; Rep.Ringhand; Rep.Ripp; Rep.Rivard; Rep.Roys; Rep.Steineke; Rep.Tauchen; Rep.Vruwink
Cc: Adrian2, Scott; Arrowood, Craig; Bahr, Dan; Boe, Steve; Carpenter2, Dan; Ehm, Katherine; Fiocchi, Tim; Gau, Maggie; Gillis, George; Kelly, Tom; Kraak, Maureen; Lundgren, Doug; Malcore, Jennifer; McWilliams, Emily; 'Mielke, Jon'; Miller, Lindsay; Plata, Christian; Pollocoff, Erin; Punches, Derek; Rausch, Scott; Scherdell, Derrick; Schneider, Alicia; Shepherd-Bussan, Colette; Sweeney, Rebekah; Wenzlaff, Tyler; Henning, Anna
Subject: Letter to RED & RA Committee from Village of Hobart
Attachments: Letter of Correction.pdf

Members,

Please find attached a letter - addressed to the Committee on Rural Economic Development & Rural Affairs - from the Village of Hobart in response to the testimony offered by the Green Bay Area Chamber of Commerce on AB 95.

Any questions or concerns regarding the letter may be directed to the Village.

Thank you!
Erin

Erin Ruby

Research Assistant

Office of State Representative Al Ott

608.266.5831

erin.ruby@legis.wi.gov



May 23, 2011

Chairman, Representative Al Ott,
Vice Chairman, Representative Jim Stelneke
All Committee Members
**Committee on Rural Economic
Development and Rural Affairs**
Room 323 North
State Capitol
P>O. Box 8953
Madison, WI 53708

**RE: Hearing on Assembly Bill 95 (AB 95)
May 19, 2011**

Dear Chairman Ott and all members of the Committee,

We ask that this letter be included in the legislative record for consideration of Assembly Bill 95, Repeal of state liquor licensing for the Oneida Tribe of Indians of Wisconsin. It is most unfortunate that inaccurate and inflammatory testimony was entered into the record of the above-noted Hearing by Ms. Nan Nelson, Executive Vice President of the Green Bay Chamber of Commerce. Below are direct misstatements cited in Ms. Nelson's testimony, and factual corrections to same:

1. CHAMBER MISREPRESENTATION: *"...the local Village of Hobart refused to grant such licenses under terms and conditions that would normally apply to any similar type of business."*

FACT: As a courtesy to the Oneida Tribe, Hobart issued an expedited temporary liquor license to the Thornberry Creek Golf Club in March of 2009 and a permanent liquor license in June of 2009. Hobart's processing of the Thornberry Golf Course liquor license was conducted in exactly the same manner as any other applicant, and in required compliance with Section 5.5 of Hobart's Municipal Code specific to liquor licenses. Hobart's liquor license ordinance is the same or similar to Green Bay's and other municipal liquor licenses throughout the State.

2. CHAMBER MISREPRESENTATION: *"...the licensing became a skirmish in the much larger ongoing war between Hobart and the Oneidas."*

FACT: To characterize legal issues submitted to courts as "a much larger ongoing war" is to utterly ignore the strong relationships that Village elected officials and staff have with individual tribal officials and our tribal residents. Legal issues are

a separate issue from strong mutual respect among Hobart residents, tribal and non-tribal.

3. CHAMBER MISREPRESENTATION: *"...the license was withheld by Hobart in order to extract concessions from the tribe on other unrelated matters."*

FACT: A liquor license was never withheld from the Onelda Tribe, nor would it be as the tribe pursues annual license renewals in compliance with Section 5.5 of the Hobart Municipal Code.

4. CHAMBER MISREPRESENTATION: *"Rescinding the liquor licenses now would put it out of business. No liquor license: no jobs, no tax base."*

FACT: Common sense and common courtesy would be exercised to ensure that as a state liquor license is nullified or otherwise expires, time would be made available for the processing and issuing of a municipal license. The golf course's financial success is an asset to the Village of Hobart, and has been treated as such.

5. CHAMBER MISREPRESENTATION: *"All to strike a blow in a war we want no part of."*

FACT: This is yet another inflammatory reference to a "war" of which Ms. Nelson's level of awareness on this subject is minimal, and absent any contact or confirmation with the Village of Hobart.

6. CHAMBER MISREPRESENTATION: *"Perhaps Hobart is willing to forego the tax revenue and jobs, but why should our schools, our county and our technical college have to suffer the loss of revenue?"*

FACT: The Onelda Tribe of Indians owns approximately one-fourth of the land in Hobart, has removed 1,581 acres from the property tax rolls, and has packaged up an additional 3,300 acres for removal from the property tax rolls. By objecting to such a significant loss of property tax, the Village Board is executing our responsibility to protect taxpayers and the tax base of the Village, and in so doing we likewise protect the revenue for taxing entities such as Northeast Wisconsin Technical College (NWTC), Brown County and school districts.

7. CHAMBER MISREPRESENTATION: *"Why should hundreds of residents have to lose their jobs?"*

FACT: The phrase, "hundreds of residents" at risk of losing their jobs is an intentional exaggeration to tarnish the municipality as unfriendly to business and economic development. While every job in Hobart is essential, Ms. Nelson inflates the number of employees at the Thornberry Creek Golf Course as "hundreds of people," with no ability to require verification of such a statement. A survey of similar golf courses in Brown County that include 18 holes, a

restaurant and pro-shop indicate a range of 35-50 employees during the peak golf season. Hobart has continuously supported and promoted the success of the Thornberry Creek Golf Course. Supporting all local businesses is an entirely separate process from any legal matters placed with a court.

8. CHAMBER MISREPRESENTATION: *"If this law is enacted, what will we tell the next prospective \$10 million Investor, afraid that his or her business could be destroyed in a moment, just to score a political point?"*

FACT: The Village of Hobart has installed over \$15 million in assessed valuation in new businesses and housing in the year 2010 alone, and has moved forward as a leader in economic development in Brown County, even during the economic downturns of 2009, 2010 and currently. We have received repeated publicity in major business publications such as *Marketplace Magazine*, *Insight on Business Magazine*, and numerous newspapers, describing our extraordinary growth and job-creation in a tough economic climate. In 2010 new parcels created in Hobart were 10% of new parcels created statewide in Wisconsin. The Green Bay Chamber of Commerce has never acknowledged and now impugns such substantial efforts of this municipality.

Hobart has been at the tables of regional partnerships, and an ongoing supporter and contributor to the Green Bay Chamber of Commerce for over a decade or more. In the past 5 years, Hobart has contributed \$7,709 to the Green Bay Chamber. We specifically contributed \$3,800 to the Chamber's "Better By The Bay" Program, even as we are not near "the Bay." We cannot compete, however, with the annual generous contributions of the Onelida Tribe of Indians of Wisconsin to the Green Bay Chamber. We are saddened that the Chamber would step into an issue between two of its members, much less with such venom and lack of veracity.

We believe that the intent of Assembly Bill 95 is fair and restores equal treatment of liquor licenses for both municipalities and Indian tribes. We encourage passage of AB 95.

Sincerely,



Richard Heidel, President
Village of Hobart
2990 South Pine Tree Road
Hobart, WI 54155
920.655.3107





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON RURAL ECONOMIC
DEVELOPMENT AND RURAL AFFAIRS

FROM: Anna Henning, Staff Attorney ^{AH}

RE: Responses to Questions Raised During the Public Hearing on 2011 Assembly Bill 95

DATE: June 8, 2011

This memorandum provides information in response to questions raised by committee members during the May 18, 2011 public hearing of the Assembly Committee on Rural Economic Development and Rural Affairs. The questions relate to 2011 Assembly Bill 95, which repeals authority of the Department of Revenue (DOR) to issue retail beer and intoxicating liquor permits to federally recognized American Indian tribes with reservations encompassing not less than 60,000 acres nor more than 70,000 acres.

At the public hearing, several individuals testified that the permitting authority was enacted in response to a dispute between the Village of Hobart, Wisconsin, and the Oneida Tribe of Indians of Wisconsin regarding the issuance of a liquor license for the Thornberry Creek Golf Course. Representatives of the tribe and the village testified that the village had conditioned the issuance of the license on the tribe's placement in escrow of an amount equal to storm water assessments charged by the village with regard to land held in trust by the federal government on behalf of the tribe.

Committee members requested information regarding the following questions:

1. Is the Oneida Tribe the Only Federally Recognized Indian Tribe to Which the Permitting Authority Applies?

As mentioned, current law authorizes DOR to issue specified permits for the retail sale of beer and intoxicating liquor to federally recognized tribes with reservations encompassing not less than 60,000 acres and not more than 70,000 acres. [ss. 125.27 (3) and 125.51 (5) (d), Stats.] It appears that

the Oneida Tribe is currently the only federally recognized tribe in Wisconsin to which those criteria apply.¹

2. What Fees Apply to DOR Permits for the Sale of Alcoholic Beverages?

Municipal governments generally administer licenses for the retail sale of alcoholic beverages in the state. However, the DOR is authorized to issue permits for the retail sale of beer and intoxicating liquor in several narrow categories – namely for specified vessels, sports clubs, airports and public facilities, and tribal bodies that fulfill the criteria described above. [ss. 125.27 and 125.51 (5), Stats.] For such entities, DOR currently requires a fee of \$600 for a two-year permit authorizing the retail sale of intoxicating liquors, and a fee of \$200 for a two-year permit authorizing the retail sale of beer.

3. How Are Liquor Licenses Administered in State Parks?

As the owner of state park land, the state may allow the sale of alcoholic beverages on state property, including state parks, without issuing a license or permit. In addition, state parks are not subject to municipal licensing authority. Thus, it appears that a state entity may sell alcohol on state land without obtaining any license or permit.

Nonetheless, various state statutes may limit a given entity's ability to sell or serve alcohol in state parks. For example, current law generally requires caterers to serve alcohol only on premises specifically provided on their licenses. A statutory exception applies to events held at Heritage Hill State Park. For events held there, a caterer licensed by a municipality to serve alcoholic beverages may do so within the park, notwithstanding that the caterer's license does not specify Heritage Hill State Park as a premises where the caterer is authorized to sell alcohol. [s. 125.51 (3) (bw), Stats.]

4. What is the Distinction Between Tribal Land Held in Trust Versus Tribal Land Owned in Fee?

In general, tribal lands may be broadly categorized as either fee land or trust land.² Fee land is land for which a tribe or individual American Indian holds title in fee simple. Trust land is land for which title is held in trust by the federal government on behalf of an Indian tribe or an individual American Indian. A tribe may petition the U.S. Secretary of Interior to acquire new land in trust for the benefit of the tribe. The Secretary of Interior may do so under the regulations described under the next question heading.

The most significant difference between land held in fee by the tribe and land held in trust is ownership: tribes hold the title to land held in fee, whereas the United States holds the title to lands held in trust. In addition, trust land cannot be sold without the prior approval of the Secretary of Interior.

¹ For more detailed information on the size of the tribal lands in Wisconsin, see the tribal profiles provided at witribes.wi.gov. As defined under state law, "reservation" generally appears to encompass both land held in trust by the United States on behalf of a tribe and land owned by a tribe in fee.

² Another category of land tenure unique to American Indians is restricted fee land, for which a tribe or tribal member holds title in fee subject to a federal patent that restricts alienation. For most purposes, such land is treated the same as trust land.

Federal law also provides that trust land is generally exempt from taxation by state and local governments.³ In contrast, fee land is freely alienable and is subject to state and local taxation.

5. What Ability, if Any, Does a Municipality Have to Stop a Tribe from Putting Land in Trust?

Decisions regarding placing tribal land in trust are made by the U.S. Department of Interior. Subject to federal statutes authorizing such land acquisitions, the Department of Interior may acquire land to be held in trust for a tribe if one of the following circumstances applies:

- The property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area.
- The tribe already owns an interest in the land.
- The Secretary of Interior determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

[25 C.F.R. s. 151.3 (a).]

A municipality would not have any authority to prevent a decision by the Department of Interior to acquire land to be held in trust for a tribe. Federal law provides a role for states and local governments to provide input on the use of newly acquired trust land for Indian gaming. However, limitations on the use of land for gaming purposes do not affect the authority of the Secretary of Interior to take land into trust. [25 U.S.C. s. 2719 (c).]

If you have any further questions or would like more detailed information about any of the above issues, please feel free to contact me directly at the Legislative Council staff offices.

AH:ty

³ Congress has authorized state taxes on tribes and individual American Indians in narrow circumstances. When it does so, it must make its intention "unmistakably clear." [*Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985).] The extent to which fees assessed by states or local governments on trust land may, in effect, constitute "taxes" for this purpose has not been fully resolved by federal courts.