

1981 WL 158073 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 11, 1981

***1 RE: H2340**

David Murday
Research Assistant
Medical, Military, Public and Municipal Affairs Committee
House of Representatives
Blatt Building, Room 425
Columbia, South Carolina 29201

Dear Mr. Murday:

You have asked whether the purposes of H2340, a bill to recognize certain Indian groups within South Carolina, may be served without prejudice to any future litigation involving land claims by those groups.

As I mentioned in my letter to Representative Evatt on March 25, 1981, the question of tribal existence is a major area of proof for an Indian group in the event the group brings an action for an ancient land claim. It is probably unlikely that such a claim would arise respecting any of the three groups proposed to be recognized, but it does not appear possible legally to obtain an effective waiver of such a claim from an Indian group. The reason for this is that the courts treat Indians in the same manner as minors or other persons unable to take legally binding action.

Regulations by the Bureau of Indian Affairs which set forth the tests for federal recognition by the Bureau provide some indication of what might legally constitute tribal existence. One such factor, contained in 25 C.F.R. § 54.7(a)(2) is that the group seeking recognition should be able to prove 'long standing relationships with state governments based on identification of the group as Indian.' If there has been no such longstanding relationship, H2340 should be amended to reflect that fact. If this is done, the chances that this proposed legislation would aid the tribes in any future land litigation would be considerably reduced. I would suggest a section with language such as this:

This Act shall operate prospectively only and shall not be deemed a finding by the General Assembly concerning the existence or continuity, if any, of the _____ Tribes prior to the effective date of this Act.

Although even the insertion of this language contains some slight risk for future litigation, it is unlikely that it could realistically be held by a court to constitute evidence of a longstanding tribal existence or state recognition prior to its effective date.

Please let me know if I can be of further assistance in this matter.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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