

taken on proposed contracts or agreements for the employment of legal counsel by Indian tribes. When there is a delay in the approval of a contract or agreement for the employment of legal counsel, it is for the purpose of an investigation pertinent to the contract or agreement, which is necessary to protect the interests of the Indians.

Practically all contracts require some changes to conform them to statutes and policies. At the present time the Area Director as his representative negotiates the necessary changes with the attorney, after which there is prompt approval. In some cases a contract is approved subject to agreement of the parties to a specified change. This procedure makes it possible for the contract to have an earlier effective date than would be possible if a new contract had to be drafted, executed, and resubmitted for approval. It would be a disservice to the tribes to preclude the use of this procedure.

We believe that the present procedure is working satisfactorily, and that this title is not needed; however, we do not view it as significantly changing our present practices or procedures. We believe that we can act within the prescribed time.

Title VI directs the Secretary of the Interior to revise and extend volumes 1 and 2 of Kappler, "Indian Affairs, Laws and Treaties". The revision is to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967. The revision must be kept up to date on an annual basis.

We believe these proposals to be desirable and are prepared to carry them out.

The Bureau of the Budget has advised that the enactment of S. 1843 in its present form is in accord with the President's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 29, 1968.

HON. WAYNE N. ASPINALL,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 1843, as passed by the Senate, a bill "To establish rights for individuals in their relations with Indian tribes, and for other purposes."

This Department joins the President, of course, in urging that the Congress complete action on this bill.

Title I of the bill would create a legislative bill of rights for Indians in relation to their tribal governments, patterned closely after the Bill of Rights in the United States Constitution. While in their relations with the Federal Government and State and local governments Indians possess the same rights and immunities under the Constitution as other citizens generally, the Constitution does not limit or restrict the power of tribal governments. Specifically, under existing law Indian tribes in their self-government are not bound by the Fifth or Fourteenth Amendments of the Constitution or other provisions of the Bill of Rights *Barta v. Oglala Sioux Tribe*, 259 F. 2d 553, 556-557 (C.A. 8, 1958), and *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (C.A. 10, 1959). However, in a recent case *Colliflower v. Garland*, 242 F. 2d 369 (C.A. 9, 1965) the Ninth Circuit held that *habeas corpus* was available in a Federal court to an Indian under tribal sentence, suggesting that there are some limitations on the powers of an Indian tribe in relation to its members.

The legislative bill of rights which would be provided by Title I does not impose standards on the tribes which they cannot meet, nor does it seriously impair their ability to function as tribal governments.

Section 102(1) secures the right to freedom of religion but does not restrict the establishment of religion by tribal governments. This is responsive to the theocratic nature of many tribal governments. To require a change would in effect challenge the basic structure of tribal society.

Section 102(6) guarantees to the accused in a criminal proceeding the right to counsel at his own expense. The fact that this is a departure from recent