

by the superior court unless the Indian was, in fact, legally incompetent.

Mrs. Miguel, as chairman of the tribal council, wrote to Congressman Saund at that time, for the purpose of objecting to the inclusion of the word "conservatorship" in the proposed Federal regulations. Mr. Simpson, in his capacity as tribal attorney and after direction of the tribal council, wrote to Congressman Saund, and this is what he said :

Mr. SIMPSON (reading) :

This language accepted by the Congress made it clear that the guardianship law set forth in the Probate Code for the State of California would be the guide. Hence, since the guardianship law in its application is restricted to minors and to adults who have been judicially decreed to be incompetent, it follows that competent adults would not have guardians appointed. In promulgating their regulations, the Bureau under the New section designated by it as CFR 124.5 added a new phrase to the language which had been approved by the Congress. That phrase consisted of two words "or Conservator".

As you and I know, there was no testimony whatsoever before the Congress concerning the need for conservators. Some people are inclined to loosely describe guardians and conservators as being one and the same. This is not correct because as I have already indicated, the law pertaining to guardianships would not result in the appointment of a guardian for a competent adult. In fact, it was for this very reason the California Legislature recently added an entirely new section to the Probate Code providing for the appointment of a conservator if a competent adult person was in need of assistance in the handling of his affairs. The law was passed primarily for the benefit of elderly people who did not wish to be subjected to the stigma of incompetency but who candidly admitted that their physical condition placed them in need of assistance in the handling of their affairs. Hence, they were willing to relinquish 'control' over their estate to a third party which the law permitted them to personally nominate if they so desired.

In carrying out its plan under equalization regulations, the Bureau of Indian Affairs has already determined that practically every adult person who will receive additional land by reason of the equalization bill, should have a conservator appointed. This decision has been made without regard to whether the adult person was competent and has been based upon the rather broad conclusion that the competent adult Indians should have an outsider controlling their estate.

Mr. EDMONDSON. This was a quote from your letter to Judge Saund and not from Judge Saund ; is that correct ?

Mr. SIMPSON. That is correct, Mr. Chairman.

Mr. PATENCIO. It must be realized that the burden of proving incompetency can be extremely difficult so the superior court and the Bureau of Indian Affairs devised a new gimmick in order to control nearly all Indian estates.

The members of this committee will note if they merely read section 4, that it contains no reference to appointment of guardians. Nevertheless, in its application, both the Bureau of Indian Affairs and the superior court expanded it to embrace a new California law known as the conservatorship law.

Our Indians still believe that if an adult Indian is non compos mentis, or incompetent, he should have a guardian appointed, but also firmly believe that Indians, like all other persons, should be entitled to the presumption that they are competent to handle their own affairs upon reaching 21 years of age, and that this presumption should never be disregarded. An Indian upon reaching his majority, should be given a chance to handle his own affairs and if his performance record thereafter shows legal incompetency, then a request could be made for an appointment of a guardian. Since the Bureau of Indian Affairs and the