

A section-by-section analysis of the proposed state bill has not been prepared. However, the attached commentary gives a good summary of the purposes of this legislation as originally drafted by the task force, and the final form as adopted retained most of the essential features of the task force draft.

State Representative Willie Hensley, Chairman of the Task Force, will introduce the Report of the Task Force to Governor Hickel which the legislative proposals of the task force were intended to implement.

1. *State of Alaska vs. Udall, et al.*

On February 10, 1967, the State of Alaska filed a suit against Stewart Udall, the Secretary of the Interior, in the U.S. District Court at Anchorage, Alaska. In its complaint the State sought, among other things, a judgment requiring the Secretary of the Interior to issue a patent to the State to certain lands claimed by the natives of Nenana but selected by the State pursuant to its authority to select certain lands under the Alaska Statehood Act. In its complaint the State alleged that the Secretary of the Interior had frozen all further land dispositions because of native land claims and that this action by the Secretary was contrary to law.

The U.S. Attorney's office filed a motion to dismiss the complaint on the grounds that the suit was in effect a suit against the United States and that the United States could not be sued without its consent. In addition, the United States stated that the natives of Nenana were an indispensable party and could not be sued without the consent of Congress. The court on October 13, 1967, denied the motion of the United States.

Subsequently, the U.S. filed its answer to the complaint and a pretrial conference was held on January 5, 1968. At the conference the United States indicated that it would stand upon its original position and that undoubtedly it could stipulate to the facts with the State of Alaska. The court invited all parties to stipulate to the facts and for the State to file a motion for summary judgment.

On January 10, 1968, the court permitted the Native Village of Nenana to intervene in the suit and to file its answer. The Native Village of Nenana's answer asserted that it was the rightful owner and possessor of the land in question and not the United States. (Nenana has never received a hearing on the merits of the factual issues.)

The State has now moved for summary judgment and the motion has been fully briefed by the parties. It is expected that the District Court will rule generally in favor of the plaintiff and against the contentions of both the defendant and the intervenor, except that Nenana may obtain hearing on the factual issues of actual use and occupancy.

The reason for ruling against the contentions of the intervenor will probably be based largely upon the United States Supreme Court's decision in *Tee-Hit-Ton Indians vs. United States* 384 U.S. 272 (1955). In that case the court in a five-to-three decision ruled that an Alaskan Indian clan, although it may have a valid aboriginal title, had no compensable interest in the land used and occupied by it absent specific Congressional legislation to the contrary. The Native Village of Nenana is contending that this decision was incorrect and is seeking to have the Supreme Court reverse itself. There is some possibility of this happening in view of the change in the make-up of the court since 1955, and in view of the failure of Congress to settle the land claims.

In the event the United States Supreme Court reverses itself, then the interest of the Native Village of Nenana and every other Alaska native village in the land used, occupied and claimed by it will be compensable. After a Supreme Court decision, regardless of the disposition of the due process issue, the usual course would be that, after securing a jurisdictional act, there would be a separate lawsuit filed by each of over two hundred villages seeking compensation or title for land used and occupied by it. In the past other such lawsuits have taken many, many years to conclude. This is not a suitable solution to native land claims. The problem is here and now and should not await a solution thirty or forty years from now.

For these reasons it is most imperative that the native land claims legislation that is adopted avoid court proceedings. In the interest of justice to the natives, the problem should be resolved on the basis of outright grants of land and money by Congress to the natives. And that is what Governor Hickel's Task Force on Native Land Claims has proposed.