



Upstate Citizens for Equality
Niagara Frontier Chapter
836 Indian Church Road
West Seneca, NY 14224-1235
<http://www.upstate-citizens.org>

March 24, 2004

Steven Getman, Esq.
Seneca County Attorney
1 DiPronio Drive
Waterloo, NY 13165

Dear Mr. Getman:

I am writing to you on behalf of the membership of Upstate Citizens for Equality. Recently you were quoted in an article written by Denise Champagne that appeared in The Finger Lakes Times Online Edition as saying "the county has no authority to enforce the law" referring to the Tax Law and the amendments enacted by Chapter 62 of the Laws of 2003. This statement is not entirely correct as explained below and I urge both you and Mr. Swinehart to enforce the laws.

The District Attorney's Office has no common-law duties, except those as are imposed by statute (People v Corning, 2 NY 1). The duties of the office as set forth in County Law § 700(1) include the duty "to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he shall have been elected or appointed". Although the District Attorneys have plenary prosecutorial power in the counties wherein they are elected, the Attorney General has no such general authority and is "without any prosecutorial power except when specifically authorized by statute" (Della Pietra v State of NY, 71 NY2d 792, 797; see, County Law §§ 700, 927). Various provisions of Article 37 of the Tax Law criminalizes certain acts and omissions and classifies them as misdemeanors and felonies. In fact in People v. Christie the defendant was charged with "conspiracy (Penal Law § 105.05 [1]) to falsify business records of the corporation, and with falsification of such records (Penal Law § 175.10) in order to conceal the commission of the crime of offering false sales tax returns for filing (Penal Law § 175.35). This alleged scheme is based upon the false use of out-of-State addresses purported to be the shipping destination of furs actually sold and carried from the premises in order to avoid the sales tax that is imposed on local retail transactions." Also Tax Law § 1814 (d) provides "Any person, other than an agent licensed by the commissioner, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax imposed by section four hundred seventy-one of this chapter, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of article twenty of this chapter shall be guilty of a misdemeanor. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class E felony." As you can see the county has the power and the duty to enforce the Tax Law where it does impose criminal sanctions for non-compliance.

The county also has jurisdiction on Indian Land the United States Supreme Court in Nevada v. Hicks, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed. 2d 398 stated "Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as "sovereign" entities, it was "long ago" that "the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within



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reservation boundaries. Worcester v. Georgia, 6 Pet. 515, 561 (1832)," White Mountain Apache Tribe v. Bracker, 448 U. S. 136, 141 (1980). "Ordinarily," it is now clear, "an Indian reservation is considered part of the territory of the State." U. S. Dept. of Interior, Federal Indian Law 510, and n. 1 (1958), citing Utah & Northern R. Co. v. Fisher, 116 U. S. 28 (1885); see also Organized Village of Kake v. Egan, 369 U. S. 60, 72 (1962)." Additionally, 25 USC § 232, passed in 1948, extends the State of New York's criminal jurisdiction to "offenses committed by or against Indians on Indian reservations within the [state]." "[S]ection 232 extended concurrent jurisdiction to the State of New York." United States v. Cook, 922 F.2d 1026 (2nd Cir. 01/07/1991) In interpreting this federal statute the Appellate Division, Fourth Department of the New York Supreme Court ruled in People v. Debo, 652 N.Y.S.2d 174, 234 AD2d 944, lv denied 89 NY2d 984 "The Village of Seneca Falls is not "Indian country" (18 USC § 1151), but even assuming, arguendo, that it is, we nonetheless reject the contention that the court lacked jurisdiction over the offense (see, 25 USC § 232; People v Edwards, 64 N.Y.2d 658, 485 N.Y.S.2d 252, 474 N.E.2d 612, affg 97 A.D.2d 987 for reasons stated at 78 A.D.2d 582)." And in People v. Gunton, 604 N.Y.S.2d 445, 198 A.D.2d 890 lv denied 610 N.Y.S.2d 163; 82 N.Y.2d 896; it ruled "We reject defendant's contention that 25 USC § 232, which confers jurisdiction upon New York State over criminal offenses occurring on Native American reservations, is invalid because it violates the Treaty of 1794 (7 U.S. Stat 44). The validity as well as the constitutionality of 25 USC § 232 is well settled (see, People v Boots, 106 Misc. 2d 522; Gunton v Cattaraugus County, F. Supp [decided Aug. 27, 1993]; see also, United States v Cook, 922 F2d 1026, cert denied sub nom. Tarbell v U.S., U.S. , 111 S Ct 2235)."

Why has there never been any prosecution of any Indian retailer for a violation of the provisions of the Tax Law imposing criminal sanctions despite the ample evidence and the blatant violations by the Indian retailers?

Sincerely,

Daniel T. Warren
Chair
Niagara Frontier Chapter of Upstate Citizens for Equality

Cc: Richard Swinehart
Seneca County District Attorney
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Waterloo, NY 13165