



OLR RESEARCH REPORT

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SCHAGHTICOKE PETITION FOR FEDERAL RECOGNITION AND LAND CLAIMS

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You asked for a summary of the Schaghticoke Tribal Nation's (STN) petition for federal recognition. You also asked for (1) a summary of the tribe's land claims, (2) the differences in state and federal tribal recognition, and (3) possible sites for a potential casino.

SUMMARY

Since 1981, the Schaghticoke have sought federal recognition as an Indian Tribe. In 1986, the Schaghticoke tribe split politically into the Schaghticoke Indian Tribe and the STN. The STN then petitioned for federal recognition.

In a preliminary ruling in 2002, the Department of Interior's Bureau of Indian Affairs (BIA) denied the tribe's petition on the grounds that it had not met all the requirements for federal recognition. Specifically, the tribe did not prove it had (1) a cohesive community or (2) maintained continuous political leadership.

In 2004, the BIA determined, mainly based on Connecticut's recognition of the STN as a tribe, that the STN met these criteria. Thus, the STN became a federally recognized tribe. The state appealed and in 2005, the Interior Board of Indian Appeals (IBIA) heard the appeal. The board decided that the BIA had incorrectly relied on state recognition and remanded the decision back to the BIA, which, based on the IBIA's instruction, reanalyzed the criteria and determined the STN did not meet

them. As a result, the STN's federal recognition was taken away. The STN then made several appeals to federal court, with both the district court and the Second Circuit upholding the BIA's denial.

Concurrent with the STN's quest for federal recognition, the tribe was also suing to regain land it previously lost. In a case which consolidated three land claim cases, the federal district court determined that the STN could not establish a case for land rights because it was not a federally recognized tribe.

Federal recognition acknowledges a tribe's sovereignty and establishes a government-to-government relationship with the federal government. It also gives federally recognized tribes access to certain federal benefits and programs. The benefits of state recognition are much more limited and state-recognized tribes do not enjoy the same immunities as federally recognized ones.

According to several newspaper articles, the STN has considered a number of sites for a casino. The articles specifically mention the Union Carbide property in Danbury and the Bridgeport-owned Steel Point tract along the harbor. Also mentioned were sites in Fairfield and New Haven counties, including sites in Waterbury, New Haven, and Stratford.

FEDERAL RECOGNITION PROCESS

The process begins when a tribe files a letter of intent, after which the tribe submits a formal petition that goes through a preliminary review. The public and other interested parties then have an opportunity to comment. After the commenting period, the petition is under active consideration, where the BIA determines in a final determination if the tribe meets the mandatory criteria for recognition. Under federal regulations, a petition must satisfy seven criteria for a tribe to be federally recognized. The petition must contain:

1. a statement of facts identifying the tribe as an American Indian entity on a substantially continuous basis since 1900;
2. evidence that a predominant portion of the group has existed as a distinct community from historical times to the present;
3. evidence that the tribe has maintained political authority or influence over its members as an autonomous entity from historical times to the present;

4. a copy of the tribe's governing document, including membership criteria, or, if it does not have a formal governing document, a description of its membership criteria and governing procedures;
5. an official membership list, any available former lists, and evidence that current members descend from a historic tribe or tribes that combined into a single autonomous political entity;
6. evidence that the tribe consists mainly of people who are not members of an acknowledged North American Indian tribe; and
7. a statement that the tribe is not the subject of the congressional legislation that has terminated or forbidden the federal trust relationship (25 CFR § 83.7).

The STN, which is a state-recognized tribe, petitioned for federal recognition in 1991 (when it amended its governing document).

Letter of Intent and Proposed Finding (Preliminary Ruling)

In December 2002, the BIA issued a proposed finding that the STN did not meet two of the required criteria for federal recognition, namely that the tribe did not prove it had (1) a cohesive community or (2) maintained continuous political leadership (*Proposed Finding Against Federal Acknowledgement of the Schaghticoke Tribal Nation* (Dec. 11, 2002), available at <https://www.federalregister.gov/articles/2002/12/11/02-31229/proposed-finding-against-federal-acknowledgment-of-the-schaghticoke-tribal-nation>). (For more information on the federal regulatory acknowledgment process of Indian tribes, including mandatory criteria, see OLR Report [2013-R-0361](#).)

Comment Period/Technical Assistance

After the preliminary ruling was issued, there was a roughly eight-month comment period. During this period, the BIA's Office of Federal Acknowledgement (OFA) provided technical assistance to the tribe, which then provided additional evidence and submitted a revised petition. OFA raised several issues with the petition and determined that the STN had not provided sufficient evidence of community and political authority for significant periods of time.

Final Determination

After the preliminary findings and comment period, the BIA issued a final determination on January 29, 2004, granting the STN federal recognition. The BIA based its decision on the continuous historic state recognition of the STN and the fact that it had a state-maintained reservation that dated back to colonial times. It determined the criteria were met because of the state's recognition, even though there was no direct evidence of community and political leadership for certain time periods (*Final Determination in Regard to Federal Acknowledgement of the Schaghticoke Tribal Nation* (Jan. 29, 2004), available at <https://www.federalregister.gov/articles/2004/02/05/04-2532/final-determination-to-acknowledge-the-schaghticoke-tribal-nation>).

State Appeal of Final Determination

After the final determination was issued, the State of Connecticut, Kent School Corporation, Connecticut Light and Power Company, and the Town of Kent filed a request for reconsideration with the IBIA, which is the department's appellate review body for Indian matters.

On May 12, 2005, the IBIA vacated the final determination and remanded it to the BIA assistant secretary for reconsideration. In the reconsideration, the state challenged the use of the historically continuous state recognition and the state relationship as providing evidence of "community" and "political influence or authority."

The IBIA reviewed the decision and concluded that Connecticut's implicit recognition of the STN as a distinct political body was not reliable or probative evidence for demonstrating a group's community or political influence or authority. It also stated that implicit recognition did not fulfill the political criterion and a state relationship must be determined on a case- and fact-specific basis (*In re Federal Acknowledgement of Schaghticoke Tribal Nation*, 41 IBIA 30 (2005), available at <http://www.oha.doi.gov/IBIA/IbiaDecisions/41ibia/41ibia030.pdf>).

As a result, the IBIA determined that the BIA had incorrectly used state recognition as a substantial portion of the evidence in its decision to grant federal recognition. The IBIA vacated and remanded the determination back to the BIA.

Upon remand, the BIA reanalyzed the recognition criteria and affirmed the IBIA's conclusions that the tribe did not satisfy the requirements to be acknowledged as an Indian tribe (*Reconsidered Final Determination To Decline To Acknowledge the Schaghticoke Tribal Nation* (Oct. 11, 2005), available at <https://www.federalregister.gov/articles/2005/10/14/05-20719/reconsidered-final-determination-to-decline-to-acknowledge-the-schaghticoke-tribal-nation>).

THE STN APPEALS TO FEDERAL COURT

District Court

The STN petitioned the federal court to invalidate the BIA's ruling because it was, among other things, (1) a product of undue political influence and (2) decided arbitrarily and capriciously (*Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389 (D. Conn. 2008)).

The court determined that there was no undue political influence and that nothing in the record convinced it that the state and federal legislator's ex parte communications (i.e., written correspondence, public announcements, or meetings) actually influenced the decision-making process.

The court also decided that the decision was a reasonable agency interpretation of the regulations and not arbitrary and capricious. It noted that an agency's interpretation of its own regulations is entitled to great deference. The court upheld the BIA's decision, thus the STN was not entitled to federal recognition.

Appeal of District Court Ruling

The STN appealed to the Second Circuit Court of Appeals, mainly claiming that the BIA's decision should be overturned because of improper political influence. (The STN dropped the arbitrary and capricious claim.) (*Schaghticoke Tribal Nation v. Kempthorne*, 587 F.3d 132 (2d Cir. 2009)).

The appeals court upheld the district court's decision and stated that even if the elected officials intended to influence the BIA's decision, there was no evidence that they had done so.

The STN appealed this decision to the U.S. Supreme Court, which refused to hear the case.

LAND CLAIMS

The General Assembly of the Colony of Connecticut granted the Schaghticoke tribe around 2,500 acres of land. Through the years this area has shrunk to about 500 acres. The STN has on several occasions tried to recover portions of the land, which is now owned by the Kent School, the Town of Kent, Connecticut Light and Power, and other private entities.

Court Cases

In 1985, 1998, and 2000, the STN filed suits to restore around 2,000 acres the tribe claims were illegally taken. The federal district court of Connecticut consolidated the three cases and decided that the STN could not establish a case for land rights because it was not a federally recognized tribe (*U.S. v. 43.47 Acres of Land, et al.*, 896 F. Supp. 2d 151, 154 (D. Conn. 2012)).

In all three cases, the STN asserted land claims pursuant to the Nonintercourse Act. This act states that:

[n]o purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution (25 USC § 177).

The court decided that if the STN does not qualify as an Indian tribe, it could not establish a prima facie case of a violation of the Nonintercourse Act. Even though the STN argued that the court should independently analyze whether it qualified as a tribe under the Nonintercourse Act, the court found it more appropriate to defer to the BIA's factual findings and declined an independent analysis.

Additionally, the court held that the STN is prohibited from re-litigating the issue of its status as an Indian tribe and is bound by the BIA's determination that it does not qualify as an acknowledged Indian tribe. But, if the STN were to gain federal recognition through an amended administrative process, congressional acknowledgement, or another judicial ruling, these land claims could possibly be re-litigated.

EFFECT OF RECOGNITION

Federal and state recognition of Indian tribes confer different benefits to a tribe. The main difference is that federal recognition acknowledges a tribe's sovereignty. (We only discuss tribal sovereignty generally. This issue (federal, state, and inherent sovereignty) is complex and beyond the scope of this report.)

Federal recognition gives tribes the ability to govern themselves, including establishing their own government, enact legislation, and establish law enforcement and court systems. Additionally, states generally cannot apply or enforce state laws on tribal lands, unless the federal government has delegated such authority. Another important benefit of federal recognition is that federally recognized tribes may open a casino under the federal Indian Gaming Regulatory Act (IGRA) (25 USC §§ 2701 through 2721).

When the state recognizes an Indian tribe, the benefits are much more limited. The benefits are those recognized by state laws, legislative resolutions, administrative regulations, and other documents, which define the government-to-government relationship. Additionally, state-recognized tribes are not given the same immunities from state law as federally recognized tribes.

Benefits of Federal Recognition

Federal recognition allows tribes to establish a tribal government and generally exempts them from state and local jurisdiction. However, Congress has the authority to limit and remove certain tribal powers. Tribes may also delegate authority to a state through a compact.

The federal government has a trust relationship with these Indian tribes, with the government holding the tribe's land in a trust for the benefit of the tribe. This trust relationship means the federal government has an obligation to ensure the protection of tribal governments, lands, assets, resources, and treaty rights.

As part of this trust relationship, the tribes qualify for certain federal funding and services from the BIA. These federal benefits include access to certain programs including financial assistance, housing, education, and social services.

Crimes committed by Indians against another Indian on the reservation are prosecuted in tribal courts, except for major crimes. Major crimes (e.g., murder, manslaughter, and rape, among others) are prosecuted in federal court. (The Mashantucket Pequot tribe, through Department of Interior procedures, and the Mohegan tribe, through its compact, has given the state the authority to enforce certain criminal laws.) The state does not have civil jurisdiction or taxing authority over tribes and their members. (The jurisdictional analysis is different when the case involves non-Indians or if it is not on the reservation.)

Federal recognition could allow the tribe to open a casino if the tribe fulfills the statutory framework of IGRA. Class III gaming (including slot machine, casino, lottery, and pari-mutuel wagering) is lawful on these reservations only if (1) authorized by a National Indian Gaming Commission-approved tribal ordinance; (2) located in a state that permits such gaming for any purpose by any person, organization, or entity; and (3) conducted pursuant to a negotiated tribal-state compact.

Connecticut-Recognized Tribes

Connecticut statutes recognize five tribes: (1) Golden Hill Paugussett, (2) Mashantucket Pequot, (3) Mohegan, (4) Paucatuck Eastern Pequot, and (5) Schaghticoke (CGS § [47-59a](#)). The Mashantucket Pequot and Mohegan tribes are also federally recognized and have additional rights and immunities conferred by the federal government.

Connecticut statutes give these tribes power over (1) determining their membership and residency on their reservations, (2) determining the tribal form of government and leadership, (3) regulating trade and commerce on the reservation, and (4) making contracts. Reservation land is held by the state but the tribe has all the other rights of ownership, except alienation. Tribal members on their reservation can hunt, fish, and trap without a license (CGS § [47-65a](#)).

State criminal law applies to Indians of state-recognized tribes, even for crimes committed on the reservation. Connecticut also appears to have civil jurisdiction over state recognized tribes and their members, but cannot interfere in certain areas of self-government, such as tribal membership. State reservation land and motor vehicles owned by members of “an indigenous Indian tribe or spouse garaged on the reservation of the tribe” are exempt from property tax by statute (CGS § [12-81](#)).

Connecticut law declares it is state policy that all resident Indians of qualified Connecticut tribes are full state citizens with all legal rights and privileges and also with certain special rights to tribal lands by treaty or other agreement (CGS § [47-59a](#)). A tribe determines who can live on its reservation land (but anyone lawfully residing there on October 1, 1989 can continue to do so). Someone who is not a member of the tribe or a spouse or child of a member cannot reside or go on the tribe's reservation without the tribe's written permission (Conn. Agency Regs. § [47-59b-30](#)).

The statutes specify that nothing in the chapter on Indians can be construed to confer tribal status under federal law (CGS § [47-66h](#)).

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