



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

NOV 18 2016

PORTLAND AREA
INDIAN HEALTH SERVICE
1414 NW NORTHROP, Suite 800
PORTLAND, OREGON 97209

Mr. Robert Kelly, Jr.
Chairman, Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244

COPY FOR YOUR
INFORMATION

RECEIVED

NOV 21 2016

Dear Chairman Kelly:

Galanda Broadman PLLC

I am writing in response to a letter to Mary Smith, Principal Deputy Director, dated November 2, 2016 from Mr. Gabriel Galanda of the Galanda Broadman law firm sent on behalf of the 331 enrolled Nooksack Tribe to the Indian Health Service (IHS). The letter included a complaint with supporting evidence alleging the Nooksack Tribe's refusal to provide health care services for up to 331 enrolled members of the Nooksack Tribe.

The IHS and the Nooksack Tribe (Nooksack or Tribe) entered into a contract, authorized by Title I of the Indian Self-Determination and Education Assistance Act (ISDEAA) that requires the Nooksack Tribe to provide services to all eligible beneficiaries. It is our understanding that the Northwest Intertribal Court System issued an order on March 22, 2016, ruling that the 331 members in question are still enrolled members of the Nooksack Tribe. Furthermore, it appears that subsequent actions to disenroll these members by the Nooksack Tribal Council lacked a sufficient quorum and were done in violation of the Tribe's own Constitution and bylaws. See attached October 17, 2016 letter from the United States Department of Interior, Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs.

The IHS is not interpreting the Tribe's Constitution or interfering in internal Tribal matters, but rather ensuring all eligible beneficiaries receive health care benefits in accordance with both Federal and Tribal law. Accordingly, until the Tribe has a sufficient quorum and a final decision is reached regarding the status of the 331 members in question, Nooksack must ensure that they receive access to health care services. Failure to comply with the eligibility provisions of the Tribe's contract with IHS, and with IHS' eligibility regulations, may require the Agency to take necessary measures to ensure health services are provided in accordance with applicable federal law.

I trust this information is helpful. If you have questions regarding this letter, please contact Mr. Terry Dean, Director, Office of Tribal & Service Unit Operations, by telephone at (503) 414-5555 or by email at Terry.Dean@ihs.gov.

Sincerely,

Dean M. Seyler
Director

Enclosure

Cc: Tribal Council members, Nooksack Indian Tribe
Stanley M. Speaks, Regional Director Northwest Regional Office, Bureau of Indian Affairs
Gabriel S. Galanda, Galanda Broadman Law Firm



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 17 2016

The Honorable Robert Kelly, Jr.
Chairman, Nooksack Tribe
P.O. Box 157
Deming, Washington 98244

Dear Chairman Kelly:

As you know, the Nooksack Tribal Council (Council) lacks a quorum to conduct tribal business as required by the Nooksack Tribe's (Tribe) Constitution and Bylaws. Four Council members' terms expired in March 2016, and an election was never held to fill their seats. The Council currently consists of four members.¹ The Nooksack constitution and bylaws provide:

"At any special or regular meeting of the tribal council, five (5) members present shall constitute a quorum and the tribal council may proceed to transact any business that may come before it."²

Accordingly, pursuant to the plain language of the Tribe's Constitution and Bylaws, the Council must have five duly elected officers to take any official action.

In rare situations where a tribal council does not maintain a quorum to take action pursuant to the Tribe's Constitution, the Department of the Interior (Department) does not recognize actions taken by the Tribe. This is one of those exceedingly rare situations. Accordingly, I am writing to inform you and the remaining Council members that the Department will only recognize those actions taken by the Council prior to March 24, 2016, when a quorum existed, and will not recognize any actions taken since that time because of the lack of a quorum.

We will not recognize any actions until duly elected officials are seated in accordance with the Tribe's Constitution and Bylaws. This includes recent actions by you and two Council members to enjoin the authority of the Northwest Intertribal Court System (NICS). Since the NICS was authorized by a quorum of the Council to adjudicate matters prior to March 24, 2016, we will continue to recognize judicial decisions issued by the NICS.

I want to be clear that the Department is not interpreting the Tribe's Constitution or interfering in internal tribal matters. The Department fully respects tribal sovereignty and tribal law. Rather, we are underscoring that pursuant to our government-to-government relationship between the United States and the Nooksack Tribe, we will only recognize action taken in accordance with the Tribe's Constitution and Bylaws.

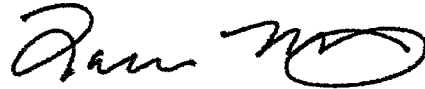
¹ Another Council member was allegedly recalled via an election in April.

² Nooksack Bylaws Article II Section 4.

Under Federal law, the United States has a duty to ensure that tribal trust funds, Federal funds for the benefit of the Tribe, and our day-to-day government-to-government relationship is with a full quorum of the Council as plainly stated in the Tribe's Constitution and Bylaws. As such, the Bureau of Indian Affairs (BIA) will examine any self-determination contracts or funding agreements it has with the Tribe to ensure the Tribe's compliance with all contract provisions. In the event of non-compliance, BIA will take action to reassume the particular Federal services, in whole or in part, and provide direct services to currently enrolled tribal members.

The BIA stands ready to provide technical assistance and support to the Tribe to carry out elections open to "all enrolled members of the Nooksack Tribe, eighteen years of age or over" regardless of county residency, to vote to fill the vacant Council seats.³ Please be advised that elections inconsistent with Nooksack law will not be recognized by the Department. Should you have any questions, please contact my office at (202) 208-7163.

Sincerely,



Lawrence S. Roberts
Principal Deputy Assistant Secretary –
Indian Affairs

cc: Regional Director Speaks
Northwest Intertribal Court System
Nooksack Tribal Council members

³ Nooksack Constitution Art. IV Section 1. *See Belmont v Kelly*, No. 2014-CI-CL-007 (Nooksack Tribal Ct. Jan. 26, 2016).