S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

October 17, 2006

Opinion No. 06-165

Tennessee Commission of Indian Affairs - Individual and Organizational Recognition Criteria

QUESTION

What is the status of individuals and organizations that were formally recognized by the previous Tennessee Commission of Indian Affairs, which was terminated under the "sunset laws" on June 30, 2001?

OPINION

The recognition officially accorded to 89 individuals by the previous Tennessee Commission of Indian Affairs before that Commission was terminated by operation of the sunset laws remains in force and effect. This Office is aware of only one Native American Indian organization that the former Commission recognized before its termination in 2001, but that organization's recognition status is no longer valid. The decision officially recognizing that organization in 1993 effectively expired after 1995, once the organization failed to submit updated membership rolls under the former Commission's rules.

ANALYSIS

The previous Tennessee Commission of Indian Affairs terminated on June 30, 2001, in accordance with the sunset laws. *See* Tenn. Code Ann. §§ 4-29-112, 4-29-222. Before the previous Commission was terminated, it recognized 89 individuals as Native American Indians under the recognition rules in effect at that time. The current Commission was created through the enactment of Chapter 344 of the 2003 Tennessee Public Acts. Section 11(c)(3) of Chapter 344 provides, in pertinent part,

> [a]ll rules, . . . and decisions promulgated or issued by the Tennessee commission of Indian affairs prior to, and in effect on June 13, 2003 shall remain in force and effect and shall be administered and enforced by the Tennessee commission of Indian affairs created by this part until duly amended, repealed, expired, modified or superseded.

The recognition rules promulgated by the former Commission were not in effect on June 13, 2003, because they had expired on June 30, 2002. Tenn. Code Ann. §§ 4-5-226(b)(1) and 4-29-112

provide that, upon termination of a governmental agency, an agency's rules expire upon completion of the one year wind-up period (June 30 of the next succeeding calendar year). But the recognition *decisions* made by the former Commission with respect to individual Native American Indians under those earlier rules were in effect on June 13, 2003, unless one of two circumstances had occurred before that date. Under the rules of the previous Commission, an individual who had received formal recognition by the Commission could be removed from the Commission's rolls either through the receipt of a death certificate or other evidence of death acceptable to the Commission, or the individual could "terminate his or her enrollment by submitting written notice to the Director of the Commission." Tenn. Comp. R. & Reg., ch. 0785-1-.07(3) and (4) (expired June 30, 2002).

It is our understanding that none of the 89 individuals who were officially recognized by the former Commission was removed from the rolls by death or acted to terminate his or her enrollment either before or since June 13, 2003. Therefore, the decisions by the former Commission recognizing those 89 individuals as Native American Indians remain in force and effect by operation of law under section 11(c)(3) of Chapter 344 of the Public Acts of 2003.

The former Commission also officially recognized one Native American Indian organization before its termination in 2001. In October of 1993, the previous Commission granted recognition to the United Eastern Lanape Nation of Winfield, Tennessee. [1] But under the rules of the former Commission, recognized organizations were required to submit updated membership rolls "on a biennial basis for renewal of recognition certification." Tenn. Comp. R. & Reg., ch. 0785-1-.07(2) (expired June 30, 2002). It appears that there are no records indicating that the United Eastern Lanape Nation ever submitted such updated information after its official recognition in 1993. Although we understand that the current Commission apparently reaffirmed the 1993 recognition of the United Eastern Lanape Nation as a Native American Indian organization in December 2005, such recognition has no legal validity. The decision officially recognizing the Lanape in 1993 effectively expired after 1995, once the organization failed to submit updated membership rolls under the former Commission's rules, and the current Commission had no rules in effect regarding recognition in 2005. Consequently, there are no Native American Indian organizations holding official recognition status by either the former or current Commission of Indian Affairs.

[1] The former Commission issued a letter dated October 12, 1993, officially recognizing the United Eastern Lanape Nation of Winfield, Tennessee, as an "Indian-related Organization in Tennessee." We note that the former Commission's rules had no provisions for recognition of "Indian-related" organizations.

MICHAEL E. MOORE
Acting Attorney General and Reporter

ANDY D. BENNETT
Chief Deputy Attorney General

ELIZABETH P. McCARTER
Senior Counsel

Requested by:

Tennessee Commission of Indian Affairs
c/o Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243