



# State-Tribal Relations Committee

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Shawn Bordeaux  
Chair

Jordan Youngberg  
Vice-Chair

Governor Noem and Secretary Flute,

The Tribal Relations Committee along with more than half of the tribal Chairmen met by teleconference on Monday, May 11. This was set up on Sunday after we became aware of the challenges in regard to protecting the native populations and yet trying to address the roadway checkpoint issues. We believe that the best interests of all citizens can be amicably achieved. To that end, we are collectively asking for a meeting with Governor Noem and Secretary Flute to reach our shared goal of protection of the health and welfare of all.

There are several shared goals and we see them as follows: 1) protection of the health and welfare of the tribal members as well as any other individuals traveling within Indian country; 2) maintaining mutual respect and strong working relationships between the state and the tribes; 3) maintaining controlled and necessary access to tribal lands; and 4) an opportunity to seek legal guidance by submitting an agreed-upon set of facts for interpretation.

As to the first goal, protection of health, it's important to realize that the native population has an historical perspective that is a bit different from the rest of the state. That perspective reflects back on epidemics such as smallpox and the concern they have that this could be a repeat of those devastating times. The native population also has disproportionately dangerous health issues that include many of the 'vulnerable' types such as diabetes and heart disease issues. As a result, the more aggressive protection of the native communities is not an unreasonable response. In the effort to protect those geographic areas it is not unreasonable to establish checkpoints so the tribes know who is accessing their land and for what purpose. There has not been an intention to abuse this protection, so

it is important to develop a reasonable protocol that accomplishes the goal without unnecessarily interfering with commerce and travel.

That leads us to the second goal which is to maintain a good working relationship. That can be done by clarifying the goals of the checkpoints and working together to recognize the different approaches needed from one reservation to another. Some can accomplish their goals solely on tribal roads, but others need to have control from the state or federal roadways. We believe there can be reasonable accommodations made to do this, and that would accomplish our third goal.

The fourth goal is one that, we believe, can be accomplished as a joint effort. The final guidance might not be as timely as we would want, but it will certainly be important to have some of these questions answered as the effects of this pandemic might continue for longer than we hope. Also, there will likely be other challenges that will arise and it is prudent for us to know how the law can be applied in the years ahead.

There are several cases which lend some guidance to interpreting the law, but there are also some issues which we believe will need clarification. Those include the need to define the legal concepts as applied to these cases with such words as: 'consultation' and 'agreement'. In the current state of affairs it will be helpful for all parties to know what actually constitutes 'consultation' and whether we can confidently state that 'consultation' has taken place, or whether an 'agreement' has been accomplished. Agreed protocols can achieve this goal.

It is also necessary to address 'open' versus 'closed' reservations. That was considered in an Eighth Circuit case and will clearly have an impact on how to interpret and apply the law across the state. To that end, it would be very useful to agree upon a set of facts and invite Indian Law legal scholars to weigh in and provide their expertise in that analysis.

A separate issue, but also very important, is to enhance the channels of communication between the state and the tribes. The recent communication from the Governor's office left some uncertainty as to whether the checkpoints were going to become a place of physical confrontation. For the sake of easing tension yet maintaining order, it will be important that communication from the state to the tribes be done in

such a way as to ensure the messages are received. The tribes certainly want to know when and under what circumstances the Governor might employ the assistance of the National Guard as to 1) providing medical assistance to tribes, and 2) controlling the enforcement of checkpoints on various federal, state or tribal roadways. A reference to 'legal action' leaves a sense of uncertainty and the possibility of a threat to the sovereignty of the tribes.

It is important to understand that the "checkpoints" were never intended to be "road blocks". There certainly would be great benefit in having agreed upon protocols for those checkpoints for the sake of safety and consistency, and that is why we invite this conversation.

The tribal Chairmen on our teleconference expressed their appreciation for the success they have had working with state, county and local officials and employees in regard to all of the issues including the checkpoints. They truly appreciate the opportunity they had to work together to accomplish hundreds of tests for both native members and members of the general public at Standing Rock, and the shared goals of protecting the health of those who live in areas where health care is limited. The Chairmen also had creative ideas and made very thoughtful suggestions as to how these checkpoints can be conducted to protect health without infringing upon travel any more than necessary.

Everyone's time and resources are best spent working together to answer questions and achieve goals. Mutual understanding and respect are the goals of the tribal leaders.

Finally, the Committee asks that the communication from the Governor's office be as direct as possible and confirming that the message has been received, preferably through combined media such as emails, phone calls or texts. Public postings should only be done with advanced notice to tribal Chairmen. The recent 48 hour notice letter from the Governor's office came to the attention of some of the intended recipients through news reports and social media. That notice left a cloud of uncertainty. Now is not the time for divisiveness and there is probably room for individuals on both sides to express regret about some comments. The fear that emergency personnel would not be able to access tribal lands

does not help, and the confusion following communications is not always the fault of one side.

So, we ask that you make time for a broader discussion with the Tribal Relations Committee with the hope that we can work together to overcome these challenges.

Thank you.

*-State-Tribal Relations Committee*