

PERFORMANCE AUDIT

COMMISSION OF INDIAN AFFAIRS

Report to the Arizona Legislature
By the Auditor General
January 1985
85-1



DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

January 22, 1985

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Clinton Pattea, Executive Director
Commission of Indian Affairs

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Commission of Indian Affairs. This report is in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

This performance audit report is submitted to the Arizona State Legislature for use in determining whether to continue the Commission of Indian Affairs beyond its scheduled termination date of July 1, 1986. The report addresses the Commission's effectiveness in serving as a liaison between the State government and Arizona's 20 tribal governments and recommends changing the agency from an independent commission to an office of Indian affairs reporting directly to the Governor.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton
Auditor General

Staff: William Thomson
Mark Fleming
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Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Commission of Indian Affairs in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Commission of Indian Affairs was established in 1953 to consider and study conditions of Arizona's Indian citizens. Arizona's reservation Indian population and their extensive tribal lands illustrate the significance of Arizona's Indian citizens. According to the 1980 United States Census, approximately 152,500 Indians live in Arizona, with about 75 percent residing on 20 reservations. Reservation land amounts to about 28 percent of Arizona's total acreage.

The Commission of Indian Affairs does not adequately address the major issues affecting Arizona's Indian population and State agencies serving Indian citizens. The intergovernmental relationship between the State and tribal governments creates conflicts between the two. As a result, important issues and concerns emerge which require coordination among State agencies and communication between the State and the tribes. Although coordination and communication among State agencies and tribes are necessary to address important issues, the Commission does not fulfill these needs. The majority of the staff's activities have little impact on significant intergovernmental issues. Intergovernmental concerns are not addressed because the Commission and its staff lack direction and leadership.

The State's effectiveness in addressing State-tribal concerns could be improved if the current structure were terminated and replaced with an Indian affairs office within the Governor's Office. Such an action would provide the increased authority, visibility and policy direction needed to resolve State-tribal issues. The Legislature should also consider clarifying the laws of the agency, whether or not it is restructured, to give more direction as to its role.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona Commission of Indian Affairs in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The Commission of Indian Affairs was established in 1953 to consider and study conditions of Arizona's Indian citizens. Arizona's reservation Indian population and land base illustrate the significance of Arizona's Indian citizens. According to the 1980 United States Census, approximately 152,500 Indians live in Arizona, with about 75 percent residing on 20 reservations. The land held by Arizona Indians and tribes amounts to about 28 percent of the State's total acreage.

Commission Role and Purpose

The Commission's statutory role in addressing Indian affairs is broad (A.R.S. §41-542). In addition to studying the conditions of Indians, the Commission must report the accounts of its proceedings, transactions, findings, and recommendations to the Governor and the Legislature. To fulfill its duties, the Commission must meet twice a year. It may employ staff, hold hearings, make investigations, and confer with officials of local, State and Federal agencies to secure their cooperation in promoting the welfare of the Indian people. In addition, the Commission may initiate or assist with programs on a reservation with tribal council approval.

Personnel and Budget

The Commission consists of 13 members: seven Indian members, two non-Indian members-at-large, and four members who serve by virtue of their office. The ex officio members are the Governor, the Superintendent of

Public Instruction, the director of the Department of Health Services, and the Attorney General. The Commission employs four staff: an executive secretary, an administrative assistant, a field coordinator and a secretary.

Revenues for Commission operation are obtained from a General Fund appropriation. The Commission may also apply for, accept, receive and expend public and private gifts or grants of money or property upon such terms and conditions as may be imposed by the donor. However, the Commission has not received any gifts or grants in recent years. The Commission's expenditures for fiscal years 1981 through 1984 are shown in the following table.

ACTUAL AND ESTIMATED EXPENDITURES
FISCAL YEARS 1980-81 THROUGH 1983-84

	Actual 1980-81	Actual 1981-82	Actual 1982-83	Estimated 1983-84
Employees	4	4	4	4
Expenditures:				
Personal Services	\$ 78,000	\$ 86,300	\$ 85,800	\$ 93,200
Employee Related	15,200	18,200	19,000	21,500
In-State Travel	7,300	3,900	2,600	3,600
Other Operating	12,300	10,600	7,800	10,300
Equipment	<u>0</u>	<u>200</u>	<u>0</u>	<u>0</u>
Total	<u>\$112,800</u>	<u>\$119,200</u>	<u>\$115,200</u>	<u>\$128,600</u>

Source: Commission of Indian Affairs budget requests for fiscal years 1982-83 through 1984-85

Audit Scope and Purpose

The purpose of the audit was to respond to the Sunset Factors as required by A.R.S. §41-2354 and to evaluate:

- The need for a coordinating body within State government devoted to Indian affairs, and
- The Commission's effectiveness in meeting that need.

The Auditor General and staff express appreciation to members and staff of the Commission of Indian Affairs for their cooperation and assistance during the course of our audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Arizona Commission of Indian Affairs should be continued or terminated.

1. The objective and purpose in establishing the Commission

Its enabling statutes do not state the legislative intent in establishing the Commission of Indian Affairs. However, the objectives and purpose of the Commission can be inferred from its powers under A.R.S. §41-542.A, which states:

"The Commission shall consider and study conditions among Indians residing within the state. The studies shall be made to accumulate, compile and assemble information on any phase of Indian affairs. For such purpose the Commission may employ staff personnel, hold hearings, make investigations, and confer with officials of local, state and federal agencies in order to secure cooperation between the federal, state and local governments in the promotion of the welfare of the Indian people."

2. The effectiveness with which the Commission has met its objective and purpose and the efficiency with which the Commission has operated

Although the Commission activities are within its statutory boundaries, the Commission has not been effective in meeting State and tribal needs. The statutes creating the Commission's duties are broad and allow the Commission to undertake any activities it deems necessary. However, through a survey of tribal and State officials, Auditor General staff identified many issues affecting both the State and the tribes which the Commission has not actively addressed. The Commission is not specifically required to address these concerns; however, the concerns are those that the State and tribal officials indicated need to be addressed at the State level. (See Finding 1).

3. The extent to which the Commission has operated within the public interest

The Commission has operated in the public interest to a limited degree by providing a central point for Indian affairs in Arizona. Although the Commission has engaged in some significant activities, the Commission's failure to address major concerns limits its contribution to the public interest. The Commission often provides information to individuals upon request. However, due to the Commission's lack of visibility, State agencies and tribes rarely request Commission involvement on major concerns. In addition, the Commission has not met twice a year as required by A.R.S. §41-541. Although the Commission met twice in 1983, the Commission did not meet in 1982, and as of October, had not yet met in 1984.

4. The extent to which rules and regulations promulgated by the Commission are consistent with the legislative mandate

This factor is not applicable as the Commission has not promulgated any rules or regulations.

5. The extent to which the Commission has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

This factor is not applicable as the Commission has not promulgated any rules or regulations.

6. The extent to which the Commission has been able to investigate and resolve complaints that are within its jurisdiction

This factor is not applicable as the Commission is not a regulatory agency.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

This factor is not applicable as the Commission is not a regulatory agency.

8. The extent to which the Commission has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

The Commission does not perceive deficiencies in its statutes that require change. According to a memo from the Commission's Attorney General representative, the Commission's statutes are broad enough to authorize any activities the Commission chooses to undertake.

9. The extent to which changes are necessary in the laws of the Commission to adequately comply with the factors listed in the Sunset Law

The Legislature should consider the following changes to the Commission's statutes.

1. Restructuring the Commission of Indian Affairs to provide a stronger link to the executive branch. The Legislature should terminate the Commission and restructure it as an office of Indian affairs within the Governor's Office.
2. Clarifying the laws of the agency, whether or not it is restructured, to give more direction as its role. The laws should require the agency to act as a coordinator between the State and the tribes, and to assist the governments in addressing important State-tribal issues. The law should require the agency to identify and research important issues and make recommendations for their resolution.

10. The extent to which the termination of the Commission would significantly harm the public health, safety or welfare

Termination of the Commission of Indian Affairs in its current form would not significantly harm the public health, safety or welfare. Although the existing Commission may not be necessary, there is a need for active State involvement in the resolution of State-tribal concerns. However, the Commission is currently not addressing the major issues identified by State and tribal officials, but spends the majority of time on small-scale activities. Therefore, the Commission of Indian Affairs should be terminated and an office of Indian affairs created within the Governor's office. (See Finding 1, page 9).

11. The extent to which the level of regulation exercised by the Commission is appropriate and whether less or more stringent levels of regulation would be appropriate

This factor is not applicable as the Commission is not a regulatory agency.

12. The extent to which the Commission has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished

Except for a study titled "Indian Employment Within State Government" in 1977-78, the Commission has not used the services of private contractors in connection with its duties. The 1977-78 study used Federal funds received through the Four Corners Regional Commission.

FINDING I

THE ARIZONA COMMISSION OF INDIAN AFFAIRS DOES NOT ADEQUATELY ADDRESS MAJOR STATE-TRIBAL CONCERNS

The Commission of Indian Affairs does not adequately address the major issues affecting Arizona's Indian population and State agencies serving Indian citizens. The nature of State-tribal relationships creates the need for coordination between these two distinct forms of government. However, most Commission activities have little impact on significant issues. Arizona could more effectively address State-tribal issues by reorganizing its Indian affairs agency.

Relationship Between State And Tribes Creates Issues

The nature of the relationship between the State and tribal governments creates conflicts. As a result, important issues and concerns emerge that require State involvement to improve coordination among State agencies and improve communication between the State and the tribes.

State-Tribal Relationship - The relationship between Arizona and its tribes creates the need for State involvement. Each of the 20 tribes in Arizona is a separate government with its own laws. State involvement with the tribes is necessary due to jurisdictional ambiguities between the State and tribal governments, State responsibilities to Indians, and mutual concerns of the governments.

- Jurisdictional Ambiguities - Varied interpretation and enforcement of law result in unclear and overlapping jurisdictional applications between the State and tribal governments. Jurisdictional responsibility in a particular case may depend on whether the people involved are tribal members, Indians from other tribes, or non-Indians; whether an activity occurred on private, tribal or State property; and whether the subject at issue is the acknowledged responsibility of one government.
- State Responsibilities - Arizona must meet constitutional responsibilities and follow Federal program mandates as they affect Indian citizens. There are approximately 114,000 Arizona Indian citizens residing on reservations

controlled by 20 tribal governments. Arizona's Constitution, Articles II and XX, outlines the obligations of the State to all its citizens, Indian and non-Indian alike. In addition, the State is responsible for equitably and properly distributing Federal funds and administering Federal programs that serve Indian citizens.

- Mutual Interests - State and tribal governments share common interests regarding resource allocation and management, economic development, and the delivery of governmental services. In addition, each government's policies and activities may affect the other's plans, especially regarding common resources such as air and water. The potential impacts are significant since Indian tribes own or control about 28 percent of Arizona's total acreage. Arizona has recognized the impact of neighboring states on such issues as Colorado River water management by joining interstate commissions to promote cooperation, and it could address issues with Arizona tribal governments in a similar manner.

The overlapping legal questions, responsibilities and the frequent interactions of State and tribal governments create the need for improved coordination and communication between the governments. The nature of the relationship produces a number of issues and concerns of interest to both State and tribal officials.

Current Issues And Concerns - The State and tribal officials indicated the State-tribal relationship had suffered as a result of poor communications and the lack of coordination among State agencies. State and tribal officials* responded to a survey conducted by Auditor General staff concerning the major issues the State needed to address. Survey respondents indicated that the State has failed to develop adequate government-to-government relations, and State personnel lack knowledge about their department's responsibilities to Indians and about tribal reservations.

* The Office of the Auditor General contacted officials from several State agencies including the Department of Health Services, the Department of Education, the Department of Economic Security, the Governor's Office, the Office of Economic Planning and Development, the Game and Fish Department, the Department of Public Service, Department of Revenue, and the State Land Department. In addition, we were able to obtain input from 17 of the 20 tribes.

Survey respondents identified several issues affected by poor communications and coordination. Some issues require coordination among the various State agencies, while others involve improving State communications with the tribal and Federal governments. The issues include: economic development; taxation; education and health services delivery; water management issues, including the Central Arizona Project; and transportation planning, particularly its impact on service delivery to rural areas. In connection with these concerns, several respondents expressed a desire for a better definition of Federal, State and tribal responsibilities.

The impact of poor communications on such aspects of the State-tribal relationship as jurisdictional applications, the State's ability to meet its responsibilities, and common intergovernmental communications are illustrated by the following examples.

A tribe obtained a large grant from the Federal government for reservation road construction. Although the construction was entirely on the reservation, the Arizona Department of Transportation required project compliance with its State laws because the Department passed the Federal money to the tribe. The State laws conflicted with similar tribal laws on such construction projects.

A sewer plant was constructed in a town bordering a reservation. The tribe was not informed of the project even though effluent from the plant would enter nearby reservation lands. Generally, adjacent cities and towns, which are also separate governments like Indian tribes, are notified of such projects before permits are approved.

The Arizona Transportation Department did not contact a tribe in sufficient time to clear a right-of-way. The Transportation Department personnel did not realize that the tribe needed to contact numerous allottees; and therefore, construction was delayed.

Improving State-tribal communication and coordination is the appropriate role of the State Indian affairs agency. Arizona's Indian affairs agency should: 1) improve coordination among state agencies as their activities affect tribes, and 2) foster better communications between the State government and the 20 tribal governments. The agency should provide overall direction and assist State agencies in serving tribes.

Commission Does Not Address Important
Concerns Of Tribes And The State

Although there is a need for State involvement to provide coordination between the State and tribes to address important issues, the Arizona Commission of Indian Affairs does not fulfill this need. The Commission does engage in worthwhile activities, however, the majority of the staff's activities are small scale and do not address important State-tribal issues. Intergovernmental concerns are not addressed because the Commission and its staff lack direction and leadership.

The Commission has conducted several activities that address important State-tribal issues to some degree. The Commission has sponsored ten Town Halls that have brought State and tribal officials together to identify and discuss issues. In recent years, topics of Town Halls have included Control of Natural Resources, State-Tribal Relationships, Indian Self Determination and Barriers to Realization, Communications: Overcoming Barriers and Limitations. The Commission has also engaged in worthwhile projects such as developing and submitting a proposal to obtain Federal funding to create an economic development center for Indian and minority entrepreneurs, and assisting the Department of Revenue on a luxury use taxation project to clarify smokeshop legislation. The Commission also annually updates and publishes a Tribal Directory listing key Arizona tribal officials. In addition, the Commission occasionally assists other State agencies and Indian tribes.

Most Activities Are Small Scale - The majority of staff activities do not address important State-tribal issues. Staff activity areas include projects,* correspondence, and speaking engagements. Review of these activities did not disclose areas that addressed the major concerns identified by State and tribal officials.

* According to the executive secretary for the Commission, projects represent items that are time consuming or important.

A review of the Commission's project file for fiscal years 1981-82 through 1983-84 revealed that Commission activities are not addressing major issues. The Commission files contained 22 projects for 1981-82, 23 for 1982-83, and 25 for 1983-84. Although projects represent the staff's major accomplishments, they are usually minor tasks performed by the staff. The predominant project activity for the last three fiscal years has been to provide information. The Commission provides information on various subjects, including State legislation and policy, tribal governments, Indian culture and events, and on the Commission itself. Generally, information is provided upon request. The following projects represent some of the activities undertaken by the staff, which they perceive as significant but which do not address important issues.*

- o Referral - On October 6, 1984, the Federal Emergency Disaster Agency called the Commission's office seeking temporary employees for 30 to 90 days. The Commission's staff responded by contacting the Phoenix Indian Center's Employment Section. The Indian Center sent people to be interviewed.
- o Mailing Labels - On February 2, 1984, the Commission's secretary typed mailing labels for the Office of Planning and Economic Development's publication "Directory of State Assistance to Indian Reservations," and sent booklets to various tribes and Indian organizations.
- o Commission History - In March 1984 the Commission staff revised an essay titled, "A Brief History of the Commission of Indian Affairs." The essay was intended for distribution to students during Commission speaking engagements.
- o Activity Update - Twice in 1983 the Commission staff sent memos to Commissioners and tribal officials informing them of current staff activities. Both memos were listed as projects.
- o No Action - In March 1984 the Colorado River Tribe was involved in a jurisdictional dispute with the town of Parker. The tribe was attempting to assess an annual fee on liquor wholesalers who crossed into reservation territory to deliver their goods. In March 1984 the Department of Liquor Licenses and Control (DLLC) asked the Commission's executive secretary for assistance in resolving the issue. In April 1984 the executive secretary wrote the Commission chairman, a Colorado River Tribe member, and informed the chairman of

* According to Commission staff, the project files may not reflect the full scope of the activity involved. However, the files provide sufficient information to document the purpose of the project.

his contact with the DLLC. The chairman instructed the executive secretary to do nothing because the tribe wished to wait for a Federal court decision. The executive secretary took no further action, but listed the activity as a project.

The Commission's correspondence files and speaking engagements also fail to demonstrate the Commission's active involvement in important State-tribal concerns. A review of the Commission's correspondence file for 1983-84 showed three general types of correspondence - letters providing information on Indian culture, history and other related topics; memos referring individuals to other State agencies, tribes or Indian organizations; and internal memos. In addition, the Commission's executive secretary and the field coordinator speak at various functions. The executive secretary has spoken at high schools, community colleges, and various Indian organization meetings on subjects ranging from current Indian problems to the Commission's role in State government. The field coordinator generally speaks at high schools and elementary schools on various Indian-related topics, including native American culture.

Our review of Commission activities resulted in little evidence of Commission involvement in addressing important State-tribal issues. In addition, State agency respondents and several tribal survey respondents indicated that they do not use the Commission to assist them in resolving significant problems. The Commission's activities do not address the concerns identified by survey respondents. For example, although poor State-tribal communication was the problem identified most often by tribal and State officials, the Commission does not aggressively seek to improve communications. The issue of poor communications was specifically raised at the 1981 Town Hall, in which one State official indicated the need for State and tribal meetings. However, the Commission conducted no follow-up on this issue. In addition, the Commission has not actively addressed the two other most commonly identified issues, education and health care. Although both the Department of Education and the Department of Health Services have ex officio members serving on the Commission, no notable efforts have been made in these areas. The Commission established a subcommittee on education in July 1983, but it had not met as of October 1984.

The Commission Lacks Direction and Leadership - The Commission has failed to address major issues due to the lack of direction and leadership. The Commission's statutes do not provide clear guidance. In addition, the Commission has not directed its staff to act on specific issues. The staff, in turn, has not chosen to direct its efforts toward major concerns. As a result, the Commission is not used by State agencies and tribes to resolve issues.

The Commission's enabling legislation provides limited direction regarding the Commission's role in Indian affairs. The statutes require the Commission to submit an annual report and consider and study conditions among Indians. Specifically, A.R.S. §41-542.A states:

"The commission shall consider and study conditions among Indians residing within the state. The studies shall be made to accumulate, compile and assemble information on any phase of Indian affairs. For such purpose the commission may employ staff personnel, hold hearings, make investigations, and confer with officials of local, state and federal agencies in order to secure cooperation between the federal, state and local governments in the promotion of the welfare of the Indian people.

Although the statute is not specific, it does not inhibit the Commission from addressing State-tribal concerns. The Commission's Attorney General representative does not find the statute restrictive. In a memo to the Commission's executive secretary he stated that the purpose of A.R.S. §41-542.A is extremely broad. Specifically, he said the statute:

". . . is extremely broad, presumably subject only to the imagination of the members of the Commission, budgetary restrictions, and any legal prohibitions Thus subject to its budget and general constitutional and statutory limitation on all state agencies, the Commission's mandate and powers are not limited." (emphasis added)

Additionally, the Commission has failed to meet and provide direction to its staff. Although A.R.S. §41-541.E requires the Commission to meet at least twice a year, the Commission only met twice between January 1982 and October

1984. The meetings were held in June and July of 1983.* Even when the Commission does meet, little guidance is given to the staff. Review of Commission minutes from January 1981 through October 1984 showed few instances in which specific instructions are given to the staff. Moreover, the chairman indicated that the staff appears to operate well enough on its own.

Without specific guidance from the Commission, the staff has not chosen to pursue major issues. According to the chairman of the Commission, problems have already been addressed by the time they are brought to the staff's attention. Further, the executive secretary indicated that the Commission does not initiate contacts with State agencies or tribes to address issues. (The Commission later indicated the lack of travel funds has hampered the staff's ability to travel to reservations to identify issues. However, as our survey shows, travel is not essential for identifying critical issues). Instead, the Commission often relies on other entities, such as the Inter-Tribal Council, to take the lead role in addressing issues.

As a result of the Commission's failure to aggressively pursue issues, it has a low profile for both tribes and State agencies. Both tribal and State agency survey respondents indicated that they do not use the Commission to resolve major issues. In addition, some stated that they viewed the Commission as too passive. Instead of working through the Commission, State agencies and tribes may work with each other or intermediary groups such as the Inter-Tribal Council of Arizona. While such a piecemeal approach may be effective in addressing immediate problems, the long term effect may be fragmentation of effort and recurring problems.

Arizona Could More Effectively Address State-Tribal Issues By Reorganizing Its Indian Affairs Agency

The State could strengthen its ability to address State-tribal concerns by reorganizing its Indian affairs agency. The need for coordination in

* The Commission chairman indicated that the meetings have not been held due to the lack of appointments of new Commission members. Although A.R.S. §41-541.B requires members to hold office until successors are appointed and qualified, the chairman indicated that commissioners whose terms have expired are reluctant to attend meetings.

addressing State-tribal issues has been identified by several groups. The State's effectiveness in addressing State-tribal concerns could be improved by terminating the Commission and replacing it with an Indian affairs office with a director reporting to the Governor.

Both State and tribal officials have indicated the need for coordination to address critical issues arising from the State-tribal relationship. Most State officials surveyed by our Office indicated that they desired overall direction and assistance to implement State policies affecting tribal and State governments. Tribal officials said the State should obtain tribal involvement early in the legislative process and in State plans to address State-tribal concerns, increase State offices' awareness of tribal governments and reservation circumstances, clear the way for intergovernmental agreements, and follow up on activities to ensure proper implementation. Both State and tribal officials indicated that an effective coordinating body would anticipate and address potential problem areas; recognize tribal government sovereignty and gain the confidence of tribes; promote a dialogue between legislators, tribal leaders, and State agency administrators; and study major issues and the ramifications of proposed legislation.

The need for coordination was also expressed by the Commission on State-Tribal Relations.* According to an official of the Commission on State-Tribal Relations, each State agency should be responsible for developing a satisfactory relationship with tribes; however, there is a need for a specialized coordinating body.

Arizona should reorganize the structure of its Indian affairs agency to more effectively address State-tribal relations. The Commission is currently structured as an independent State agency with 13 commission members and four

* The Commission on State-Tribal Relations was created in 1977 by the National Conference of State Legislatures, the National Congress of American Indians, and the National Tribal Chairmen's Association. It is composed of state governors, tribal chairmen or presidents, attorneys general and legislators.

full-time staff. Reorganizing the structure and placing the agency within the Governor's office could improve its effectiveness. Such a restructuring could provide the following improvements.

- Additional authority - According to an official from the Commission on State-Tribal Relations, commissions in general do not have the authority needed to influence agencies that do not cooperate in resolving issues. Connecting an Indian affairs agency to a Governor's Office provides the incentive needed for state agencies to work on resolving issues. Although the Governor is an ex officio member of the Commission, the Governor delegates this responsibility to an Office of Economic Planning and Development official, thus the Commission lacks a direct tie to the Governor.
- Improved Visibility - The Commission currently has a low visibility. State agencies and tribes have not brought significant issues to the Commission regularly. The current agency is outside the mainstream of State agencies and tribes. The agencies and the tribes often deal directly with one another, or work through established Indian interest organizations. Therefore, issues are dealt with on a fragmented basis and recurring problems are not addressed with continuity. An Indian affairs office tied to the Governor's Office would have the higher profile needed to overcome these problems.
- Improved leadership - Elimination of the current structure could strengthen leadership of Indian affairs in Arizona. Because the Commission has met infrequently, the staff had no ongoing policy direction provided by Commission. Placing the Indian affairs office within the Governor's Office would allow the Governor to provide the agency with needed ongoing policy direction. In addition, by eliminating the Commission the problem of late appointments to the Commission would be eliminated. The director could obtain input from existing entities such as the Inter-Tribal Council and the Indian Development District of Arizona, and from Indian desk personnel in State agencies.

An effective Indian affairs office should perform several basic functions. According to an official of the Commission on State-Tribal Relations, the state Indian affairs agency should: 1) define issues in ways the State and tribes can manage, 2) be aware of the scope of issues, 3) coordinate activities that involve two or more agencies, and 4) act as a liaison between groups. The Indian affairs office would not make decisions for the State agencies or tribes, but assist them in resolving disputes and coordinating activities.

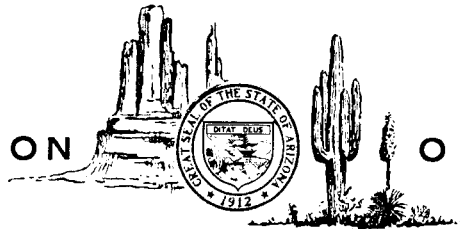
CONCLUSION

The Commission of Indian Affairs does not adequately address major issues affecting Arizona's Indian population and the State agencies that serve Indians. The unique nature of State-tribal relationships creates the need for coordination between the two governments. However, the Commission rarely addresses issues that concern the two governments. Arizona's ability to address State-tribal issues could be improved by reorganizing the Commission's structure and clarifying its laws to give more direction on the agency's role.

RECOMMENDATIONS

1. The Legislature should consider restructuring the Commission of Indian Affairs to provide a stronger link to the executive branch. The Legislature should terminate the current Commission and restructure it as an office of Indian affairs within the Governor's Office.
2. The Legislature needs to clarify the laws of the agency, whether or not it is restructured, to give more direction as to its role. The laws should require the State's Indian affairs agency to act as a coordinator for the State and the tribes, and to assist the governments in addressing important State-tribal issues. The law should require the agency to identify and research important issues, and to make recommendations for their resolution.

ARIZONA COMMISSION



OF INDIAN AFFAIRS

1645 WEST JEFFERSON • PHOENIX, ARIZONA 85007

January 17, 1985



Mr. Douglas R. Norton, Auditor General
 111 West Monroe, Suite 600
 Phoenix, Arizona 85003

Dear Mr. Norton:

With reference to your letter of January 11, 1985, our office has no further comments to offer at this time on the revised preliminary draft of the audit report. Our Commission feels that its Resolution and accompanying statement of January 3, 1985, in response to your preliminary draft, aptly describes the Commission's position and expects those documents to be made a part of the final report submitted to the legislature.

As expressed before, not only does the Commission strongly oppose the proposal to abolish the Indian Affairs Commission and establish an office of Indian affairs under the Governor's office, but objects to the method by which these conclusions were drawn and to numerous facts omitted; for instance, the report fails to mention the depth and gravity of major issues covered in Commission-sponsored Indian Town Halls by professionals and experts on such critical issues as Indian health care with respect to the statewide AHCCCS program, school financing and impact aid program funds, Indian water rights and current laws, state-tribal jurisdictional problems and so forth; all disputing the charge made in the report that the Commission does not address major concerns.

In any case, knowing that the Indian tribes will be interested in the outcome of their interview with a staff person of your office, will you please let us know if the general conclusions of your report can now be released for public information purposes?

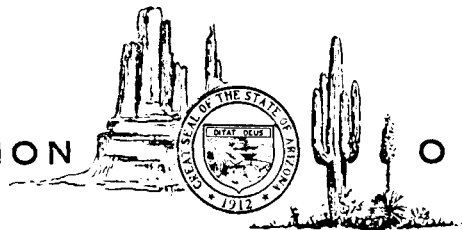
Sincerely,

ELLIOTT BOOTH - CHAIRMAN

Clinton M. Pattea
 CLINTON M. PATTEA,
 Executive Secretary

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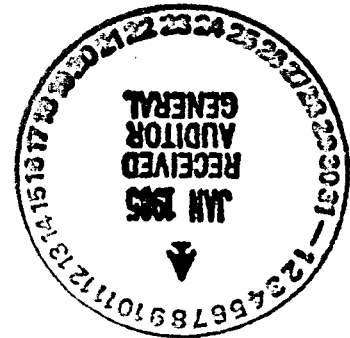
ARIZONA COMMISSION



OF INDIAN AFFAIRS

1645 WEST JEFFERSON • PHOENIX, ARIZONA 85007

January 8, 1985



Mr. Douglas R. Norton, Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

We wish to acknowledge receipt of your letter dated January 4, 1985 with enclosures.

Enclosed please find the Resolution and Attachments stating the Commission of Indian Affairs' position relative to your Preliminary Sunset Review Audit Draft.

In reviewing the Draft, the Commission officially opposed the conclusions that the Commission of Indian Affairs should be terminated and placed under the Governor's Office.

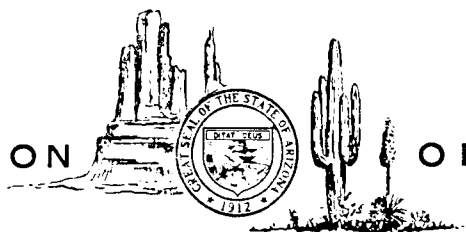
We look forward to discussing the conclusions with you and your staff on Wednesday, January 9th at 2:00 P.M. in your office. It is hoped that we can reach an amicable conclusion relative to the Commission's future.

Respectfully submitted,

ELLIOTT BOOTH - CHAIRMAN

Clinton M. Pattea
CLINTON M. PATTEA,
Executive Secretary

CMP/dd
Encl. Resolution and Attachment(s)



1645 WEST JEFFERSON • PHOENIX, ARIZONA 85007

RESOLUTION

RESOLVED, THAT, *the Arizona Commission of Indian Affairs officially opposes the conclusions reached in the Preliminary Draft Report made by the Office of the Auditor General for the following reasons: (Pertinent Resolution Attachment enclosed)*

- 1) *Inadequate budget*
- 2) *Unrealistic expectations*
- 3) *Built-in limitations regarding statutes*
- 4) *Listing of projects apparently overlooked*
- 5) *All requests to the Commission have been addressed*
- 6) *The report is unfair and biased*
- 7) *Questionable method of ascertaining tribal responses*
- 8) *Incomplete findings on Indian education and health care concerns*

BE IT FURTHER RESOLVED, *that the Commission of Indian Affairs directs its Executive Secretary to prepare this document for submission with the Resolution Attachment to the Office of the Auditor General for further consideration prior to finalizing the Draft.*

CERTIFICATION

I hereby certify that the foregoing Resolution and Attachment was duly considered by the Arizona Commission of Indian Affairs at a duly called meeting in Phoenix, Arizona, where a quorum was present when the Resolution and Attachment was adopted and approved by a vote of 12 in favor and 0 opposed on this 3-4 of January, 1985.

Elliott J. Booth
ELLIOTT BOOTH - CHAIRMAN

January 3-4, 1985
CMP:C/dd

SUMMARY

The Performance Audit of the Commission of Indian Affairs bears no realistic relationship to the actual operation of the Commission as provided by Statute. The Commission was not designed as a "super agency" to deal with the tens of thousands of Indians living within Arizona in twenty tribes; its statutory mandate is to "...consider and study conditions among Indians residing within the state."

The Sunset Report is critical because the Commission does not interfere with tribal life; for the several reasons listed in the Resolution this Commission cannot and should not attempt to dictate to the tribes of Arizona. Its coordination and communication functions are being met as well as possible under existing procedures; if mechanical improvements are necessary, they can be implemented with appropriate funding. But the recommendation to terminate the current structure and replace it with a new form of "agency" is unsupported by the evidence, unwanted by the tribes, and well beyond the scope of Sunset Review.

SUNSET FACTORS

Of the twelve factors listed on pages 5-8 of the Report, five are admittedly not applicable and the others not supported by the data apparently obtained through phone calls to individuals in the tribes. None of the "positive" accomplishments of the Commission in its specified sphere of communication and coordination are listed or even mentioned in the Report. After a totally negative analysis which omits significant documentation, the report suggests a remedy of setting up an "office" beyond legislative control for reasons of which are unclear at best. There is only one general "finding" on page 9, although pages 9-15 purport to analyze Indian concerns in Arizona. Then suggesting that these concerns are not being met, the Report goes beyond its Audit function and recommends aborting the Commission. Possibly this is because of lack of knowledge as to the nature of tribal government vis-a-vis state government, and of what the tribes themselves want in the way of support from Arizona government. For example, the report correctly recognizes that each of the twenty tribes is a separate government with its own laws (page 9), there are twenty governing units with completely different attitudes about "interference from Phoenix." The tribes individually and at different levels of activity promote their resources and advance their individual self-government. The most that any agency "whether in Commission form or otherwise" can do is to bring these uniquely different tribes together to exchange ideas, contacts, approaches, etc. This has been one of the highest priorities of the Commission; years ago "surveys" were used to exchange and communicate among the tribes. After tribal objection, the present format of annual "Indian Town Halls" was adopted, and successfully. However, budgetary travel limitations (see data on page 2 of the Report as to travel) have drastically cut back this strong tool of communication. The usual format of a two-day gathering of the tribes in an Indian environment, where state and federal agencies could communicate to them, has been cut back to one-day in 1983 for lack of travel funding.

In addition to budget limitations, there are built-in limitations in the enabling statute. Though the Commission technically is not limited as to specific activity, the type of interference suggested by the report is unwanted and impossible. The Commission of Indian Affairs cannot interfere in another state/federal department's operations and administration unless specifically requested to do so by the department. Tribal autonomy properly resents authoritarian approach by any state agency. On page 11 three "examples" are given which suggests that the Commission should involve itself in federal grants for road construction, sewer plants, and rights-of-way on reservations. The Commission has no authority in these areas, no legal staff to resolve conflicts of law and no right to interfere in individual tribal dealings. Certainly, the Commission can act as a "clearing house" for tribal concerns, and even help out on projects when requested, but these functions will not be improved by terminating the existing structure.

On page 12 the report recognizes the significance of the "Town Hall" activity, and the data annually published by the Commission, but then down-grades the activities as "small scale." The scale of activities is a direct product of the legislative mandate and funding, as outlined above. But even with these limitations, it is unfair to overlook multiple projects which the Commission has carried out successfully in the past. Over the past several (not three) years, with more budget for travel, the Commission has actively pursued projects substantially beyond the few listed on pages 12-13 of the report. (See memorandum to Auditor Baldwin from Clinton Pattea dated August 6, 1984, eight pages attached).

The Commission of Indian Affairs is currently developing a fifty (50) page Personnel Manual for the Colorado River Indian Tribes; the Luxury Use Taxation project which involved a great deal of time and effort on behalf of the Commission staff in monitoring, coordinating and keeping all interested parties apprised of happenings; Native American Indian Day wherein the Commission's Executive Secretary participated on a special committee developing activities/events for a week-long celebration. The Commission itself was in charge of an all-Indian program held in the Wesley Bolin Memorial Plaza for state employees and others to enjoy tribal culture and crafts; the Gila River Early Childhood Policy Council Bylaws were quite lengthy and concise; the Commission's projects file wherein two different proposals were developed to obtain federal funding to create an Economic Development Center for Indian and minority entrepreneurs; the Arizona Reservations In Brevity Brochure developed by the office to promote tourism within the State; the Commission's Executive Secretary was involved extensively with the Phoenix Indian High School Band's going to Washington, D. C. to participate as the first Arizona Indian group to march in the Independence Day Parade; H. B. 2237 Death Certification on Indian Reservations wherein we worked closely with the State Health Department at their request and tribal law enforcement agencies in implementing the new statutes on-reservation; nor the Navajo County Realignment issue for Senator Hubbard wherein the Commission went to the State Land Department's drafting division and had overlays done indicating boundaries and proposed changes.

These are just a few areas of importance the Commission of Indian Affairs worked in to develop state-tribal relationships but yet seen by the audit team to be irrelevant.

All requests for services to the Commission have been addressed. To the knowledge of the Commission and staff, there have not been problems/issues brought to the Commission either by a state/federal department or tribe that have not been addressed. Repeatedly mentioned in the Draft is that the Commission of Indian Affairs has not addressed the major issues of state-tribal relationships. Please refer to the attached "Major Issues Identified By The Arizona Commission of Indian Affairs" which is developed each year at the request of the Governor, legislative leaders and budget offices. In this issue paper not only are the issues identified but available options given for resolution.

Some idea of the bias injected into this Report can be gained by noting that the multiple projects indicated in the attached material are mentioned in passing, only briefly, but on page 13 of the report comparatively functions such as typing labels are detailed. The successful 1981 and 1983 Indian Town Hall meetings are not even mentioned.

The Commission recognizes that many interviewees contacted by the Auditor's Office may have misunderstood the function of the Commission and felt it should take a more activist part in actual tribal projects. But we question whether the field data is truly relevant to the conclusion stated, that the Commission be abolished. We have not been furnished with the field data (see letter dated January 3, 1985 to Mr. Norton, attached). The blank forms of the survey questionnaires apparently used have no bearing upon the issues relevant to Sunset Review. For example, question 5 asks which state agencies are contacted most frequently; fourteen agencies are listed, one being this Commission. The answer to that question cannot possibly provide any data pertinent to Sunset Review. Certainly, there can always be improvement in direction and leadership, and this Commission is probably no exception to the proposition. But the solution is not to scrap the Commission; that amounts to "throwing the baby out with the bath water."

In the areas of Indian education and health care concerns, the Commission has taken an active role in communicating availability of services through the Indian Town Hall format. We do not perceive our job to be to overlap existing education and health care agencies; rather, we believe the legislature intended this Commission to promulgate information in these areas. This we have done. The statement on page 14 that the Commission "has not actively addressed" these issues is simply untrue, nor is there any suggestion as to how better to "address" these areas. Does the Auditor suggest we set up a competing Department for education or health care? We think not. The Commission now has members from both those agencies serving Ex-Officio. These resource persons actively participate in the Commission's functions; if those departments need help with the tribes, they know the Commission is here and available.

CONCLUSION

Repeatedly through the Report one sentence is found which says, "the Commission does not adequately address major issues" affecting Arizona's Indians. It is unclear what scope of action is meant by "address". The Commission has consistently done what the legislature told it to do which is to "consider and study" Indian concerns. If the legislature wishes to create a "super agency" for Indian affairs it may do so. If the agency is to "identify and research important issues and make recommendations for their resolution" as the Report's conclusion suggests then funding for same and substantial expansion of the Commission would be necessary.

We believe a much better recommendation would be to reaffirm the Commission's specific limited role in communication and coordination; provide appropriate funding for upgrading these functions; and thus allow the Commission to intensify its activities in these significant areas. Correction of performance, leadership or visability will follow from thus upgrading the Commission's existing functions.

Respectfully submitted,

Elliott L. Booth

ELLIOTT BOOTH - CHAIRMAN

David Ramirez

DAVID RAMIREZ - VICE-CHAIRMAN

Clinton M. Pattea
CLINTON M. PATTEA, EXECUTIVE SECRETARY

PR/dd/ras

Attachments: Reference Document

- (A) August 6, 1984 Memorandum to Auditor Debbie Baldwin
- (B) Major Issues Identified by the Commission
- (C) Letter of January 3, 1985 to Mr. Norton
- (D) Program Information containing Goals and Objectives
- (E) Arizona Reservations In Brevity Brochure

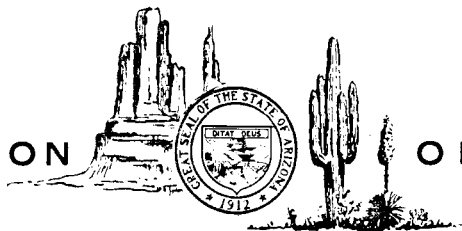
REFERENCE DOCUMENT

Commission Resolution dated January 3-4, 1985 along with Resolution Attachment composed of four pages.

- A) Memorandum of August 6, 1984 from Mr. Clinton M. Pattea, Commission Executive Secretary to Ms. Debbie Baldwin, Auditor; Response to Sunset Factors. (Referenced on Resolution Attachment page 2).
- B) Major Issues Identified By The Arizona Commission of Indian Affairs - State-Tribal Relationships. Paper contained Statement of Issue; Background; Fiscal Impact; Social, Environmental and Economic Impact; Available Options and Recommendations. (Referenced on Resolution Attachment page 3).
- C) Letter to Mr. Norton, Auditor General dated January 3, 1985 requesting back-up data supporting their conclusions. (Referenced on Resolution Attachment page 3).
- D) Program Information Statement containing the Commission's Program Description; Program Goals and Objectives; Program Plans; Program Results. (Referenced on Resolution Attachment pages 3-4).
- E) Arizona Reservations In Brevity Brochure describing the reservations in a thumbnail manner, mileage and attractions, etc.

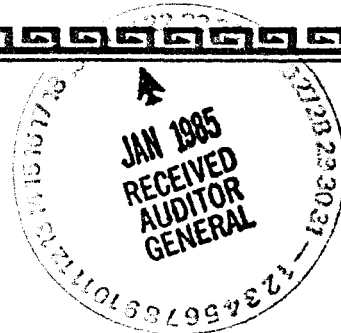
NOTE: THE COMMISSION OF INDIAN AFFAIRS PROVIDED AN ADDITIONAL 30 PAGES OF REFERENCE DOCUMENTS DESCRIBED ABOVE. THESE DOCUMENTS ARE AVAILABLE ON REQUEST FROM THE OFFICE OF THE AUDITOR GENERAL.

ARIZONA COMMISSION OF INDIAN AFFAIRS



1645 WEST JEFFERSON • PHOENIX, ARIZONA 85007

January 18, 1985



Mr. Douglas R. Norton, Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

Enclosed please find a letter from Commissioner Paul G. Rees, Jr. dated January 17, 1985.

Per request, we are forwarding this letter to you to be made a part of documentation going to the legislature relative to your final report and its conclusions pertaining to our Agency.

If there are any questions relative to same, contact the office at your convenience.

Sincerely,

ELLIOTT BOOTH - CHAIRMAN


CLINTON M. PATTEA,
Executive Secretary

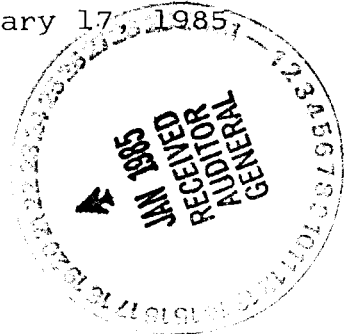
CMP/dd
Encl. Ltr. of Commissioner Rees (Original)

LAW OFFICES
PAUL G. REES, JR., P.C.
LAWYERS

PAUL G. REES, JR.
H. MICHEAL WRIGHT

145 EAST UNIVERSITY BOULEVARD
TUCSON, ARIZONA 85705
TELEPHONE (602) 624-2364

January 17, 1985



Mr. Clinton M. Pattea
Executive Secretary
ARIZONA COMMISSION OF INDIAN AFFAIRS
1645 West Jefferson
Phoenix, Arizona 85007

Re: Auditor General's "Sunset Review"

Dear Clinton:

I received and reviewed with interest the response of the Auditor General in his letter of January 4, 1985, concerning the "summary of issues" allegedly used as a basis for the conclusion that the Commission ought to be abolished. This is pure nonsense, and I request that my letter be made a part of the official response of the Indian Commission.

Apparently a member of the "team" doing the survey called seventeen of twenty tribes, and over the phone asked them to identify those issues most important to the tribe. Because fourteen identified "poor communication between state and tribal governments" as an area of concern, somehow the Auditor concludes this is some form of an indictment against the Commission. Nonsense. Because thirteen representatives thought that education was an important area of concern does not mean that the Commission should immediately start opening schools on the reservations.

The point is this: The conclusions drawn by the Sunset Review bear no reasonable resemblance to the fact that these tribes identified these issues as significant ones for Indians in Arizona. It is true that communication and coordination between the tribes and other levels of government could become an important part of the Commission's functions, but only if the Legislature so intends and funds same; and only if the tribes then choose to communicate through the Commission. Most times, that is not going to happen. For example, if a tribe wants to talk to somebody about building a road, it will call the branch of state or local government dealing with road building itself, and not simply rely on the Commission for making that call. If the Commission tried to intrude in such an area, you can visualize that the tribal authorities would probably tell us to "get lost".

A survey of this sort affords no basis at all for saying that the Legislature ought to terminate the Commission in favor of some

PAUL G. REES, JR., P.C.

LAWYERS

Mr. Clinton M. Pattea
January 17, 1985
Page Two

new bureaucratic arm to the Governor's arm. The Arizona Commission of Indian Affairs has a significant program of helping the tribes to interchange ideas through its "Indian Town Hall" conclaves; this can be expanded to improve communications. It is simplistic and counterproductive simply to try to wipe out the Commission and put it under the Governor's office. I am sure the Legislature will concur when it has an opportunity to review the entire matter. The resolution and attachment sent to the Auditor General should be placed in the report; I do not see them in the Amended Draft which I received on January 12, 1985. I think that we should insist that they be forwarded to the proper Legislative committees.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul G. Rees, Jr.", written in dark ink.

Paul G. Rees, Jr.
Commission Member

PGRJr/jf