

# STEVEN D. SANDVEN

---

## LAW OFFICE P C

**PRINCIPAL**  
**STEVEN D. SANDVEN**

*Admitted in South Dakota,  
Minnesota & Washington D.C.*

**116 EAST MAIN STREET**  
**BERESFORD, SOUTH DAKOTA 57004-1819**  
**TELEPHONE (605) 763-2015**  
**FACSIMILE (605) 763-2016**  
**SSANDVENLAW@AOL.COM**

**DATE:** May 18, 2016

**Re: Economic Development Ventures**

---

This memorandum is provided to explain a number of the issues surrounding economic development in Indian Country and how other Tribes have circumvented these issues to establish profitable non-gaming business ventures. As you know, the complex web of land restrictions within Indian country hamper economic activity and are one of the most significant barriers to development. The results of this unbalanced web are exemplified by the continued socio-economic disparities that affect Indians more than any other race in the United States. Rampant poverty, high unemployment, poor public health, and other demographic challenges have historically characterized reservation communities.

The Supreme Court case law from the early 17<sup>th</sup> century has established the political economic structure of a tribal trust relationship (called the “Marshall Trilogy”). As such, federally recognized tribes have the right to possess lands but they do not have right to alienation—the ability to sell the land (Wilkinson 2008, 120). Furthermore, Indians on federal trust lands are not subject to property taxes while the land remains in trust. These protections were put in place to ensure that Indian lands were not wrongfully seized by unscrupulous parties or local governments and states. When Indian land is held in trust by the Department of the Interior legal title to that land is effectively owned by the federal government (Young Bill 2012). This lack of land title is the root of the inability for Tribal community members to collateralize the property they live on. Trust lands may not be mortgaged or otherwise used by tribes as collateral to obtain operating capital (Wilkinson 2008, 76).

Another constraint to economic development on tribal trust lands is land use approval from the Bureau of Indian Affairs. Everything from building a home to getting a simple business license must be approved by the BIA. As such, the BIA has a significant influence on the economic development fates of tribes. The office that processes these approvals is only staffed by a couple of people so administration of these documents is often backed up. In the business world, “time is money” and lengthy building permit processes can raise the cost of doing business and can serve as a barrier to economic development” (Blakely and Leigh 2010, 155). Furthermore, tribal communities rich with natural resources such as oil or timber can only lease these resources with federal approval. This situation has necessitated the formulation of a leasing scheme that permits economic development of trust lands (Wilkinson 2008, 76). These leasing schemes have been an effective method for Indian tribes to realize capital production on their land through farming, grazing leases, and mining among others.

Sovereign immunity, while a unique power to sovereign nations also acts as a barrier to economic development. Indian tribes, like other sovereigns, cannot be sued without an “equivocally expressed” waiver of sovereign immunity. In 1998, the Kiowa Tribe of Oklahoma was sued by Manufacturing Technologies, Inc. for breach of contract. The tribe entered into an agreement to purchase stock from the manufacturer, but the tribe defaulted on the agreement. The Tribe filed a motion to dismiss for lack of jurisdiction on the grounds of sovereign immunity. Oklahoma’s highest court granted a writ of certiorari and the Supreme Court reversed the order of the lower courts that denied the defendants motion to dismiss because of sovereign immunity. While this was a victory for the tribe, businesses are reluctant to deal with tribes because no remedy exists for breached contracts (Wilkinson 2004, 76).

In 1976 the United States Supreme Court held that a state did not have the right to assess a tax on the property of Indians living on tribal land. What began as a dispute over \$147 in county tax inadvertently created a multi-billion dollar industry (Washburn 2008, 1). This landmark decision sparked unprecedented development of Indian gaming throughout the United States and ultimately created the conditions for Indian gaming to emerge as the forefront of tribal economic development. Exercising their competitive advantage, a number of Indian Tribes began developing small scale gaming operations such as high stakes bingo and card rooms on reservation land. Gaming generated unprecedented economic growth in otherwise severely economically depressed areas. Tribal casino profits can be (and are being) invested directly into tribal-owned shopping centers, recreation parks, industries and other new facilities for producing and exporting non-gambling products and services. Alternative businesses have spring up all over Indian country. For example:

- The Morongo Band of Mission Indians in CA has gone into restaurant franchising. They currently operate an A&W Restaurant and a Carron's Restaurant on their reservation.
- The Spirit Lake Nation in North Dakota has opened a marina, a gas station, restaurants and an RV park near their casino in Devil's Lake.
- The Viejas Tribe in Alpine, CA has opened an outlet mall and a bank, among other enterprises.
- The Mohegan Tribe of Connecticut is planning to invest in an aquaculture program that will include a shellfish hatchery in Stonington, CT, a processing plant on the reservation and fish barns throughout the region. They are also seeking approval to provide local and long-distance telephone service throughout the state.
- The San Manuel Band in California is opening a water bottling plant on their reservation that will focus on national and international markets, and is also building a retail center off their reservation in nearby Highland, CA.
- The Seminole Tribe of Florida has started an Aircraft Company with a vision of manufacturing single-engine, high-performance aircraft. It is the first Native American-owned company to ever gain a production certificate from the FAA.
- The Warm Springs Tribal government opened Eagle-Tech Systems (ETS). Originally started in 1972 as an internal information technology department, it was renamed ETS in January 2004. The Warm Springs Tribes owns and operates a variety of other enterprises

including a lumber mill, vacation resort, casino, composite materials manufacturing plant, museum, construction enterprise, credit enterprise, and hydroelectric power generation enterprise.

- Ho-Chunk, Inc. is chartered under the laws of the Winnebago Tribe and is wholly-owned by the Tribe. The Winnebago Tribe is organized under Section 16 of the Indian Reorganization Act (IRA). Ho-Chunk, Inc. was formed in 1994 to diversify the Tribe's business interests while maintaining a separation between business activities and the tribal government. Pursuant to its Section 16 IRA constitution, the Winnebago Tribe adopted a Winnebago Business Code that permits the formation of wholly-owned tribal corporations. Ho-Chunk, Inc. operates 15 subsidiaries in six major business areas, both on and off the reservation.
- In 2006, the Confederated Salish and Kootenai Tribes formed S&K Technologies as a Section 17 Corporation. The S&K Technologies is a general purpose company and its corporate charter permits the corporation to charter subsidiaries under either the tribe's Tribal Corporation Code or under its newly adopted tribal Limited Liability Company Code. S&K Technologies plans to charter subsidiaries under the tribal LLC Code to operate its aerospace and information technology companies that are participating in the Small Business Administration 8(a) business development program.
- In 1988, the Gila River Indian Community decided that it could no longer tolerate inadequate telecommunications services. Because the regional provider was unable to offer services at a reasonable cost or within an acceptable time frame, the Community developed and launched its own company, Gila River Telecommunications, Incorporated. Now a recognized leader in Indian Country telecommunications, this tribal company has more than doubled telephone access among Community residents and facilitated the Community's dramatic economic growth by providing state-of-the-art telecommunications services to businesses on reservation lands.
- Challenged to provide all of the pharmaceuticals needed by Band members and faced with an inability to bill and collect from third-party insurers, the Fond du Lac Human Services Division contracted with a private sector firm to implement a computerized billing system. The first of its kind for Indian Country, the on-line system interfaces with the Indian Health Service's Resource Patient Management System, speeds and enhances the Division's pharmaceutical billing capacity, increases Human Services revenues and improves the quality of care offered to Fond du Lac Band members.
- For years the Blackfeet Nation struggled to create sustainable tribal enterprises that could produce revenue for the Nation and meet the needs of its citizens for jobs and services. Many of these efforts did not succeed because of conflicts within the tribal government. In 1999, the Nation tried a new strategy. It established a federally chartered, tribally owned corporation designed to manage businesses on behalf of the government and protect those businesses from inappropriate political influence. Named after a great Blackfeet warrior known for his fearless leadership, the Siyeh Corporation today runs multiple businesses and promotes economic growth and stability while preserving Blackfeet cultural and traditional values.

- The White Mountain Apache Wildlife and Outdoor Recreation Program performs all wildlife conservation/management activities for the Tribe and operates a self-sustaining business enterprise based on the Tribe's thriving recreation and tourism industry. The Program's effective management techniques have allowed the White Mountain Apache to gain control over their wildlife and recreation resources and to manage these resources in accordance with Apache values.
- In 1998 the Tulalip Tribes created the institutional and physical blueprints for Quil Ceda Village, a uniquely structured tribal municipality that boasts a business park, several national retailers, a casino, and the infrastructure to sustain further expansion. Quil Ceda Village now attracts over eleven thousand visitors daily and offers the Tribes and surrounding communities a promise of economic growth on which their citizens can depend.
- The Ziibiwing Center of Anishinabe Culture & Lifeways is the caretaker of cultural heritage for the Saginaw Chippewa. The Center educates the Tribe's citizens and the general public through its permanent and rotating exhibits, research center, repatriation efforts, art market, workshops, and language programs. By sharing its story in many ways, the Saginaw Chippewa Indian Tribe of Michigan is reclaiming its past and celebrating its vibrant present as Anishinabe people.
- Created in 1999, the Zuni Eagle Sanctuary is the first eagle sanctuary owned and operated by Indians as well as the first aviary constructed for the purpose of cultural preservation. Combining both functional aspects of eagle care with an aesthetic that reflects the natural surroundings of Zuni, the Sanctuary is home to more than twenty eagles that otherwise would have been destroyed. Successfully meeting the Zunis' demand for molted eagle feathers that are used in religious and cultural ceremonies, the Sanctuary is also a model of intergovernmental cooperation between a tribal government and federal agency.
- The Choctaw Nation operates a 12,000-square-foot industrial park leased by American Greetings, First American Printing & Direct Mail, the largest commercial printer on the Mississippi Gulf Coast, and Choctaw Electronics Enterprise, which supplies automotive loudspeakers to its primary clients, Ford Motor Company and Daimler-Chrysler. In addition, Choctaw Manufacturing Enterprises provides automotive wiring harness assembly, lamp sockets and connectors, non-automotive wiring, and cable assemblies for commercial applications, while the tribe's Chahta Enterprise manufactures automotive and non-automotive wiring harnesses, producing 130 different part numbers totaling more than 11 million wiring harnesses annually.
- Chickasaw Nation built a corporation of businesses under Chickasaw Nation Industries (CNI). The tribe's main goal with CNI is to promote the economic development and long-term financial viability of the Chickasaw Nation. Several business ventures CNI has succeeded in building include Bedre Fine Chocolate, whose signature product, chocolate covered potato chips, are sold at Neiman Marcus and other luxury retailers. They own and operate a radio station, seven travel plazas and trading posts, seven tobacco stores, a bank, an entertainment theatre, and a community garden and greenhouse. The tribe currently employs more than 7,000 native and non-native people.

- The Pechanga Band of Luiseno Indians runs a gas station and a recreation vehicle park, and is currently looking for a partner to develop a mixed use office complex.
- The Salt River Pima-Maricopa Indian Community used its gaming revenue to fund a 140-acre retail center. As the largest commercial development ever built on Indian land, this retail power center attracted some of the industry's biggest players including Target, Home Depot, Best Buy, Ross, Marshalls, United Artists, Circuit City, Old Navy, and Toys "R" Us. Salt River Pima-Maricopa Indian Community implemented aggressive financing to secure Target as its anchor tenant. Also located on community land, Wal-Mart altered its exterior design to comply with the community's aesthetic vision.
- While many tribes are succeeding in developing their economies on their own, several tribes have found great success in collaborating to fund and develop successful enterprises. Washington, D.C., is home to the Marriott-Capitol Residence Inn owned by four tribes: Viejas Band of Kumeyaay Indians (California), Forest County Potawatomi Community (Wisconsin), the Oneida Tribe of Indians of Wisconsin, and the San Manuel Band of Mission Indians (California). The four tribes came together as "Four Fires, LLC" to build this \$43 million, 13-story, 233-suite hotel located in the heart of the nation's capitol—the most ambitious economic collaboration ever for American Indian tribal governments.

Please contact me if there are any questions.