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Wampanoags Get Fed Funds for Police Force Aquinnah, Town Police Chief Are Wary

By Nelson Sigelman

In September, Sen. Edward M. Kennedy's office announced that the Wampanoag Tribe of Gay Head (Aquinnah) had received a \$274,436 federal grant from the U.S. Department of Justice community oriented policing services (COPS) tribal grant program.

The award was the outcome of a "competitive program" designed to make sure that tribes have adequate law enforcement capabilities.

The tribe sought the grant in order to fulfill a longstanding goal to transform its natural resources rangers into a full-time police force with arrest powers.

Now, in the wake of the grant award, the insistence by tribal rangers that they be allowed to carry firearms and the tribe's effort to create a separate police force in the Vineyard's tiniest and westernmost town has led to friction between Aquinnah police chief Doug Fortes and tribal rangers.

Mr. Fortes has raised questions of jurisdiction and public safety in the up-Island town in connection with the tribe's plan to establish its own police force.

Currently, tribal rangers can only enforce tribal fish and game regulations on tribal lands. The rangers have no formal arrest powers and cannot carry weapons except when granted authority by the Aquinnah police chief as designated special police officers, and while acting with the authority of the town.

The rangers currently have special officer status but operate under guidelines set out by Chief Fortes. Those guidelines do not include the ability to patrol while armed.

Under an existing agreement signed in 1995 and recently updated, the town of Aquinnah provides police and fire protection on the tribe's approximately 400 acres, which includes the tribal housing complex and administration building.

Chief Fortes, a tribal member, said, "I am getting a lot of pressure from them to carry guns, and I am not succumbing to it."

He said he is currently working with town counsel to distance the police department and town "from any affiliations with, or any responsibilities or liabilities regarding, the carrying of firearms by natural resource officers of the tribe."

That would include revoking special officer status, the chief said.

In sharp comments regarding the effort to create a tribal police force, Chief Fortes said, "It is spearheaded by nontribal members so that they can become pseudo-cops."

The director of the natural resources department is Matthew "Cully" Vanderhoop.

Rangers Jeff Day, Bret Stearns, and Jason Baird are tribal employees but not tribal members.

Asked why the tribe wants to create a police force, Beverly Wright, tribal chairperson, said, "We are a government unto ourselves. We are going through a process of creating a judicial system, and along with a judicial system comes a law enforcement component."

Ms. Wright said rangers would only have arrest powers on tribal lands for tribal members.

A press release issued by Senator Kennedy said the grant would allow the tribe to “meet its law enforcement needs more effectively.” But an examination of the grant application reveals that tribal officials were willing to stretch the limits of the tribe’s existing law enforcement authority and areas of jurisdiction.

The Justice Department provided copies of the grant application and cover letters in response to a freedom of information act request by The Times.

Not Exactly Right

The first application question asks “Instead of providing your own law enforcement services, does your tribe contract with a local law enforcement agency for services?” Answering “yes” would have made the tribe ineligible. But the tribe answered no, despite an existing agreement with the town that provides for emergency services.

But David Buchanan, COPS public affairs spokesperson, said because the tribe has their own law enforcement agency they are qualified under the grant program to get funds. Conservation rangers meet that test.

He said, “Had they exclusively contracted with Gay Head, then they would not have been eligible.”

Asked if under COPS guidelines conservation rangers with no inherent arrest powers are considered law enforcement, he said, “It is our understanding that they do have arrest powers.” Mr. Buchanan said the conservation ranger “has sworn law enforcement authority just like any other officer.”

But he said the matter was under review.

He added, “We take these things very seriously, and if we find that there is wrongdoing or mischaracterization in some of these instances, that could cause us to reconsider.”

Asked to provide the “service population” for which the police would have “primary law enforcement authority, excluding the population “primarily served by other law enforcement agencies within your jurisdiction,” the tribe wrote: “15,000 in winter, 111,000 in summer.”

Mr. Buchanan said, “That question can be interpreted many different ways.”

He said, “We would look at it from a different perspective. If 15,000 to 111,000 people are coming in and around that tribal area, that would be considered part of their service area whether or not there are 15,000 members of the tribe or not.”

Told those figures represent the entire Vineyard’s winter and summer population for all six Island towns, each of which has a police department, Mr. Buchanan said service guidelines allow for 2.7 officers per one thousand in population. Based on the fact that there are approximately 1,000 tribal members, he said it was a responsible award to give them regardless of the service number provided.

He said, “The fact that they got it wrong isn’t enough to disqualify them. We can’t control who fills these out.”

He added, “We try to give people the benefit of the doubt without wasting the taxpayers’ investment.”

Asked to describe the land base service area, excluding square miles served by other law enforcement agencies within the tribe’s jurisdiction, tribal officials answered “20 square miles.”

Asked how 20 square miles could be correct for a tribe with jurisdiction over 400 acres in the smallest town on the Island, Mr. Buchanan said, "That is more for information gathering. Getting that wrong, or getting it not exactly right, is not a test of whether you get a grant or not."

In light of questions regarding the actual police authority of the rangers, Mr. Buchanan said the Justice Department would request further information from the tribe including copies of tribal statutes and tribal council minutes that give the rangers arrest powers, but would not necessarily check with police chief Fortes.

Asked how he would verify that the answers received are, in fact, accurate, he said, "I just don't know, I never had anyone question whether we know we get the right answers or not."

A Good Deal

COPS program grants are for three years and include requirements that the recipient contribute 25 percent of the costs and agree to continue to fund any new officers hired with grant money.

In 1996, the tribe applied for and received a \$150,000 COPS grant. But because the tribe could not provide matching funds, the grant was never utilized.

As part of the latest award, the tribe faced a matching grant of \$144,759. But in a letter to COPS officials requesting a waiver of the matching requirement, Ms. Wright said that in the past the tribe had been "afflicted with fiscal distress" and unable to use previous grants. The waiver was granted.

In a letter dated May 4, 2000, outlining how officers would be retained, tribal officials said part of the money to fund officers hired under the COPS program would come from fines and penalties.

It said the tribe's natural resources department "is creating a system in order to recycle fines, forfeitures and civil penalties, which are collected by the increased officer presence, to be used as future matching requirements for these positions."

It added the tribe is currently working with other federal agencies, including the U.S. Fish and Wildlife Service and the Environmental Protection Agency on memorandums of understanding "to create a more cooperative relationship which should include funding awards to the tribe for environmental law enforcement."

Last year, the tribe battled with the town of Chilmark and pressed federal officials in a losing bid to get space for natural resource officers in the former Menemsha Coast Guard station house, which now houses the Chilmark police department.

Under the terms of the grant, the tribe would hire two full-time officers and one part-time officer. All three officers would receive training at state and federal police schools.

The cost of two full-time officers would be \$40,635 each in salary and benefits for the first year and rise to \$44,000 in the third year. Salary and benefits for one part-time officer would be \$19,740 in the first year. Aquinnah patrolmen now earn about \$32,000 per year.

Included in the grant application is money for, among other things, training academy tuition, three sets of shirts and shorts, Gore-Tex raingear, three badges and nameplates, three security holsters, two portable vehicle computers, three portable radios, one four-

wheel drive truck equipped with a police accessory package, an all terrain vehicle, an 18-foot Boston Whaler boat, cold weather clothing, and three bullet-proof vests.

Protecting the Nation

Reached this week, Beverly Wright, tribal chairman, questioned why there would be any interest on The Times' part in the creation of a tribal police force. Ms. Wright referred to Mr. Kennedy's press release.

Asked if she thought that residents of Aquinnah would be curious about any new police force created within the town's bounds, Ms. Wright said, "No, I don't think so. I live in Aquinnah, and no one has come up to me to talk about it. They know that we get grants all the time to do things."

Ms. Wright said that in addition to police funding the tribe would receive considerable equipment. She said the creation of a police force does not mean that the services provided by the town have not been adequate.

She said the ability to take money from the federal government and use it in ways the tribe thinks are appropriate, instead of being beholden to the federal government, "that is what self-governance is all about."

Asked how the tribe could not be beholden to the federal government if it was willing to take government money, Ms. Wright said, "Because we have a government to government relationship with them."

Ms. Wright explained that the tribe is working on protocols for arrest and prosecution, and she said the tribe has been working on a judicial system for more than one year. She asked The Times to wait before reporting on the police force until the tribe "gets everything together and makes an announcement."

Asked about the tribe's need for automatic weapons, received through a previous government grant program, Ms. Wright said she would not carry the conversation any further."

A call to the natural resource department was not returned.

Improve Trust

In describing the purposes of their equipment requests for advancing community policing, the tribe said portable computers would "decrease the perception of delayed responses by our officers."

Portable radios would "improve the trust of the community in the police services our department is supplying."

Asked in the application questionnaire to describe other populations adjacent or traveling through the area that would necessitate the need for an additional officer, the tribe responded, "There is a great influx of tourists that frequent areas under ownership of the tribe. Local municipal authorities have limitations both during the summer tourist season and the hunting seasons throughout the fall and winter months, hence the need for an additional officer."

Asked about current "crime trends in your community" the tribe said current trends are primarily "traffic oriented speeding and DUI, also domestic problems, trespassing and

hunting violations. The need for the additional officer arises out of the necessity to provide coverage 24 hours a day, seven days a week.”

Black Brook Road, which leads to the tribal administration building and tribal housing, is the only paved road on tribal lands.

According to the Aquinnah police report in the 1999 town report, there were a total of “363 incidents.”

Police issued 9 criminal complaints, 174 parking tickets, and 520 moving citations.

According to past reports, there have been few or no hunting related complaints received by the state’s environmental police officer in the last few years.

Chief Fortes said, “This is a town of what, eight square miles. The force that we have right now handles the situation in Aquinnah more than adequately.”

He said the police have historically responded to calls in the tribal community, of which there are relatively few. He said, “They are usually EMS [emergency medical services] in nature or barking dogs, this is the type of threat that we are dealing with up here.”

Patrol the Tumbleweeds

Chief Fortes said it is a rare instance where a tribe is fortunate enough to have one of its own members as the chief of police in the surrounding town. Two full-time and one part-time officer, including a member of the command staff, are also members of the tribe. He said, “I live in the tribe’s community, and I have my ear to the ground on tribal law enforcement issues.”

Chief Fortes said the effort to create a tribal police department comes from a few tribal employees who want to be police. He said, “the tribe as a whole is not for this.”

Only the police chief can designate special officers, who may then, under the authority of the chief, make arrests and carry a weapon.

Chief Fortes said rangers had patrolled the beaches for years as special officers without weapons and without incident. He said that while he was willing to allow rangers to carry batons and pepper spray he refused to allow them to carry weapons.

He said the rangers “took it upon themselves” to carry weapons.

He said, “I balked immediately and said I would not permit it.”

The rangers refused to patrol the beaches. Instead, town officers patrolled the beaches.

He said, “My patience on this subject has been tested to the limit.”

Mr. Fortes said he had tried over the course of time to cooperate with the natural resource office but the tribe seems determined to create its own law enforcement agency. He said relations with members of the natural resource office have deteriorated over a period of time.

He said, “It has been done up to this time without guns, but you have some individuals that are employees of that department who put a very high self-worth on carrying firearms, and it is something I have been dealing with for some time now.”

He added, “There is no doubt that the weapon backs up the badge, but if your whole reason for being, and stepping behind the badge, and strapping on a gun is that it makes you somebody, then you are the last person in the world who should be carrying one.”

Chief Fortes said there have been no discussions regarding protocols involving arrests or how the town would respond to emergency calls. But he said he would want to know who

would take responsibility for an individual carrying a weapon that is not under his jurisdiction.

“I haven’t been able to get a clear answer on that,” he said.

But, he said, it is ironic “that nontribal employees want to carry guns for the purposes of enforcing laws on tribal lands against tribal members.”

Chief Fortes said tribal members do not understand that town and state police have authority even on tribal lands. He said tribal members would be the only people subject to tribal policing authority.

Chief Fortes said tribal rangers want to be armed to patrol noncontiguous tribal lands, which include the cranberry bogs.

He said, “The tumbleweeds are blowing down the street, and these guys want to pack Glock 9 millimeters. It is just so patently absurd.”

Town Officials Respond

Walter Delaney, town selectman when the tribe received federal recognition in 1987, said “Knowing the settlement agreement the way I do, that is not part of the settlement agreement.”

He said there are a number of jurisdictional issues involved.

According to the settlement act, the tribe has no jurisdiction over nontribal members and cannot exercise any jurisdiction counter to state and federal civil and criminal laws.

Mike Hebert, chairman of the town selectmen, said the issue of rangers wearing firearms under the authority of the town has not been discussed by the board.

Mr. Hebert said he is aware of the chief’s concerns and believes the board shares them.

He said, “It is my particular position that if they are not going to be under our chief’s direct supervision then we would not want the town to be liable for anything that may or may not happen on town property.”

Mr. Hebert, who is married to the tribal secretary, said he thinks the five-member police force provides more than adequate armed response for a very small town. While rangers are free to operate on tribal property, Mr. Hebert said that as far as operating on town property, he wants to limit the exposure of citizens to be hurt in any way.

Mr. Hebert said the creation of a police force has also not been a topic of discussion for the board.

“It is a tribal issue not a town issue,” said Mr. Hebert.

Asked why the board would not want to be kept informed, he said it “probably would be nice to be informed, but it is not a requirement.”

But he added the best way to maintain understanding was through communication.

“We probably don’t have enough communication,” said Mr. Hebert.

Karl Burgess, a selectman, also said he had not heard anything about a police force. He said the tribe and town have worked cooperatively on a number of issues.

Mr. Burgess said the creation of another police force does not make any sense.

He said, “The chief lives up there. What are you going to police?”