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State AG Asked to Rule on Tribal Ranger's Guns

By Nelson Sigelman

The town of Aquinnah has sought guidance from Massachusetts' top law enforcement official about whether the Wampanoag Tribe of Gay Head (Aquinnah) has the authority to allow tribal rangers to carry weapons without a permit from the town's police chief. In a letter dated April 24, 2001, Ron Rappaport, Aquinnah town counsel, asked attorney general Thomas Reilly "as the chief law enforcement official of the Commonwealth" whether tribal rangers are "entitled to carry exposed defensive weapons," and in a related question, "whether, under Massachusetts law, those rangers are required to receive a firearms permit from the Aquinnah Chief of Police."

On Tuesday, Ann Donlan, a spokesperson for Mr. Reilly, said the attorney general's office is aware of the issues raised in the letter and would "give the issues careful consideration."

The dispute dates back to last summer when tribal rangers, who were also designated special town police officers, refused to obey a directive from Douglas Fortes, Aquinnah police chief, that they not wear firearms while patrolling town beaches. Even after the patrols were ended, the rangers continued to claim the right to wear guns while on tribal property based on a vote by the tribal council authorizing rangers to carry "a full complement of defensive weapons."

The insistence on carrying weapons is part of a broader effort by the tribe over the years to transform natural resource department rangers into a police force with arrest powers on tribal lands. In this and other recent disputes, the tribe has attempted to exercise a level of authority that has led town officials to seek clarification regarding the exact limits of the Settlement Agreement of 1983 that secured state and federal recognition for the tribe. That agreement stipulates that the tribe is subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, since renamed Aquinnah. But tribal-town distinctions blur easily in Aquinnah, where of the three town selectmen, one is a tribal member and another is married to a tribal official, and three of the town's police officers, including Mr. Fortes, are tribal members.

The issue of the rangers' insubordination while acting as special police officers of the town ended in a compromise when the two officers were allowed to resign as special officers rather than be fired by the selectmen. But the underlying question of whether or not the tribal council could authorize the rangers to carry weapons was left unresolved. Chief Fortes has maintained that under state law, as the town's chief law enforcement officer, only he can issue a permit to carry a firearm. In a letter supporting the tribe's position, David Nicholas, eastern region district commander for the Bureau of Indian Affairs' Office of Law Enforcement Services (OLES), said the tribe has the authority to determine the equipment which will be used by tribal law enforcement personnel.

The Letter of the Law

In his letter to Mr. Reilly, Mr. Rappaport reviews the language of the state and federal statutes which led to recognition of the Wampanoag Tribe. He notes that the state act, approved in 1985 by the legislature, provides that “all federal, state and town law shall apply to the settlement lands” subject only to a special provision which relates to the ability of the tribal council to establish regulations concerning hunting by Indians on tribal lands “by means other than firearms or crossbow.”

He wrote, “It is the position of the Aquinnah chief of police that tribal rangers must obtain a firearm permit from him. It is his further position that tribal rangers are not “police officers” as that term is defined under Massachusetts law and, therefore, are not allowed to carry weapons which are not concealed.”

Mr. Rappaport added that the town does not agree with the opinions expressed by Mr. Nicholas. Mr. Rappaport said, “We believe that his opinion is not consistent with Massachusetts law and does not appropriately recognize the limitations on tribal authority set forth in the State Act, the Federal Act, and the Settlement Agreement.”

This week, Chief Fortes said he appreciates the fact that over the past few months the tribe “has shown some restraint” by not allowing the rangers to wear weapons. He said he hopes the Attorney General will offer an opinion soon.

“That is what I have been looking for all along,” said Mr. Fortes.

He said a decision could have significant implications for the town, which has operated in the belief that the Settlement Agreement sets certain specific limitations on tribal authority.

Federal Officer

In a letter addressed to Beverly Wright, Wampanoag tribal chairperson, and sent at her request, Mr. Nicholas said the authority of the tribe “includes, but is not limited to, the power to enact ordinances governing the activities of tribal members on tribal lands and to establish a means to enforce such ordinances.”

The letter, a copy of which was sent to Mr. Reilly, said, “The OLES does not advocate assigning law enforcement duties to anyone without the appropriate defensive equipment and supports the tribe’s decision to arm its conservation officers.”

Citing a section of the settlement act as approved by Congress which says that the Wampanoag Tribal Council “shall not have any jurisdiction over nontribal members,” Mr. Nicholas wrote, “This indicates to us that Congress did not intend to restrict jurisdiction of the tribe over its own members.”

He said the OLES supports the efforts of all tribes to exercise criminal jurisdiction over Indians, both members and nonmembers, within their territories.

In a telephone interview, Mr. Nicholas said that while the threat to law enforcement personnel in a small town like Aquinnah may be limited, serious situations can spring from minor incidents.

He said a tribal police officer responding to a minor call could suddenly be thrust into a life threatening situation. He said in such a case there may be no time to call for help. Throughout the firearms debate Chief Fortes has expressed concern for the town’s liability if rangers are allowed to act as tribal police officers while carrying a weapon

under a permit he issued. He said a decision by the attorney general would help clarify the liability involved.

Asked where liability would rest should a tribal police officer use a weapon, Mr. Nicholas said, "It does not rest with the town chief of police."

Mr. Nicholas said the tribe is covered under the Federal Tort Claims Act for actions taken by tribal employees. In the case of a suit, an aggrieved party would have to take on the federal government.

Mr. Nicholas said the concern for liability expressed by Chief Fortes should he issue a permit to tribal rangers is not unique. "That is a concern across the country," he said. Last year, at the tribe's request, OLES provided handguns to the tribe. Asked how it was that the tribe was able to receive weapons despite the fact that there is no actual tribal police force, Mr. Nicholas said he was provided with a tribal resolution indicating that the tribal rangers' duties have been increased to include routine law enforcement duties on tribal property.

Tribal Police Force

The tribe is continuing to move forward with plans to create a tribal police force, after reassuring federal officials in January of the tribe's plans to properly implement all of the requirements of a grant from the U.S. Department of Justice community oriented policing services' (COPS) tribal grant program (TRGP).

Federal officials had asked for further clarification of information supplied in a grant application that netted the tribe \$274,436 to start a tribal police force, after reading a news story published in the Nov. 2, 2000, issue of The Martha's Vineyard Times. The story ("Wampanoags Get Fed Funds for Police Force," available online at www.mvtimes.com) examined broad claims contained in the tribe's original grant application regarding its existing law enforcement authority and areas of jurisdiction. In previous comments, Laurie Perry, tribal administrator, said the tribe would move "slowly and methodically" to create a tribal police force. She said the tribe would keep the town informed of progress and expected to work cooperatively in the future to share tribal police resources.

Based on hiring three officers, the grant provides money for among other things, uniforms (\$2,235); Gore-Tex raingear and outerwear (\$1,605); dress leather boots (\$375); badges (\$420); bullet-proof vests (\$1,935); a new police car (\$28,875); a Polaris Sportsman 500 all-terrain vehicle (\$7,000); an 18-foot Boston Whaler boat (\$20,000), cold-weather clothing, and three bulletproof vests.

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.

As part of the latest award, the tribe faced a matching requirement of \$144,759, but that was waived based on the tribe's claim of "fiscal distress."

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.

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.