



Oregon's Approach to State-Tribal Relations ***And How Local Government May Want to Use Some of It***

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Nearly 40 years ago the State of Oregon recognized the need to have a permanent point of contact and on-going forum for consideration of tribal-state issues and created the Legislative Commission on Indian Services (LCIS), an advisory body of 13 Tribal Leaders and Legislators. A dozen years ago Oregon was the first state in the nation to pass a state-tribal government-to-government relations law which emphasizes the critical importance of establishing and maintaining a variety of ways to learn enough about each other's structures, policies, programs, initiatives, traditions and history to inform decision-makers in both state and tribal government as well as to provide opportunities for their respective programs, departments and staff to exchange relevant information and work together on shared interests. Both LCIS and Oregon's ORS 182.162-.168 have established Oregon's national reputation of cooperation with tribal governments and efforts to reduce litigation. Avoided legal costs are just one of the benefits of good relations. All Oregonians, especially those in rural communities where Tribes are located, have benefited from some positive partnerships that LCIS and Oregon's law have fostered. Some local governments also have a history of exploring ways to cooperate with local Tribes to expand opportunities and provide services in a time of scarce resources in a way that enhances the health, safety and welfare of their citizens, tribal members and non-tribal members. Other local governments may be interested in exploring the same possibility.

LCIS is available to support those on-going efforts on the part of local governments as it does with state agencies. The Commission has an office at the State Capitol which serves as a day-to-day information clearinghouse. The LCIS Executive Director is available via phone, e-mail or for meetings and trainings to suggest ways to initiate, improve or expand interactions with tribal governments.

Here are three suggestions learned from the Oregon Approach that local governments may want to consider. They may serve to increase the likelihood of positive interactions now and in the future. Following these three suggestions is a partial checklist of steps in the process that have worked for state agencies which may work for local governments.

1. Appreciate and Respect the Legal and Historical Basis of Tribal Governments:

Tribal sovereign governments- like other governments- means at a minimum that each of Oregon's nine federally recognized tribal governments has a distinctive legal and political status separate from other sovereigns including other tribal governments. Like other governments, each tribal sovereign has the inherent authority to govern its people and see to their health, safety and welfare, decide requirements for citizenship, pass laws & regulations, tax and spend, create infrastructure and provide governmental services to its citizen members. Tribal governments are not "granted sovereignty." Since the adoption of the U.S. Constitution, Tribes have been acknowledged in the Constitution's treaty and commerce clause. Tribes conducted business as sovereigns-including activities reserved for sovereigns such as signing treaties with the U.S. - before the State of Oregon came into existence in 1859. Tribes, therefore, are the oldest form of sovereigns in Oregon by thousands of years.

One additional feature to bear in mind is the unique relationship that tribal governments have with the federal government based on the federal government's "trust responsibility" and the U.S. Supreme Court determination

of the status of Tribes as “domestic, dependent nations.” (“domestic”—i.e., not foreign and “dependent”—i.e., having a special relationship with the federal government separate from the States). This may come into play in some local government-tribal government interactions such as the fee-to-trust process, treaty rights, federal commitments to support tribal self-determination, tribal authority, in certain cases permitting Tribes to get Treatment as a State status regarding Clean Air Act and Clean Water Act implementation, as well as other regulatory authority that may be of interest to local government with jurisdiction of lands adjoining tribal trust or reservation lands. Of note is the potential for federal monies that may flow into an area of the state because of an on-going commitment to a Tribe because, e.g., a county is designated by Congressional Act as one or another Tribes’ “service area”. Other reasons local government might want to establish a productive relationship with local tribal governments is because of cultural resources which are protected under state and federal law on lands within a county’s borders, infrastructure which a tribe may develop that offers enhanced economic or population growth opportunity to a local jurisdiction (like a water treatment plant, a charter school, a health clinic a tribal enterprise that will create hundreds of new jobs for individuals who will become local government taxpayers and may no longer need county services for the unemployed or underemployed).

2. In order to conduct effective government-to-government relations, one must learn about the distinction between federally recognized tribal governments in Oregon and in other states, non-federally recognized tribal governments, Indian organizations, tribal members of one of Oregon’s nine federally recognized tribal governments, tribal members of Tribes in other states and self-identified Indians.

Oregon’s Approach focuses on the nine federally recognized tribal governments in Oregon and effective relations depends on appropriate dialogue with a tribal government’s duly authorized representative on the subject at hand. State and local government agencies (as well as legislators and federal representatives, for that matter) seem to have no trouble with this concept when dealing with each other (e.g., you know that Deschutes county can’t speak for Klamath county, or that DEQ cannot speak for the Department of Agriculture, or that the Governor of California cannot speak for Oregon,) but often it seems state and local government representatives may not take the time or attention to behave in the same way towards tribal members, tribal governments and Indians in general. Serious misunderstandings can be avoided when we appreciate where all governments share some attributes in terms of certain leaders, departments or individuals having specific authority even though each government may have its own structure, laws, rules, jurisdiction, culture and traditions (including different state agencies and local governments individual “culture”).

Oregon’s Indian population is small—approximately 1.6 % of the population—but the legal status of tribal governments as sovereigns (with rights and responsibilities for critical natural, cultural, economic and social resources within the State’s borders) makes on-going State-Tribal dialogue a necessity and, likewise, suggests the importance of a “good neighbor” policy with respective local governments. In the current weak economy, seeking the most efficient provider of governmental services—avoiding duplication and supporting efforts to create jobs (particularly in rural areas) is a priority for the State, Tribes and local government. The ability to provide infrastructure improvements, educational and social services and natural and cultural resources management may be augmented in several of the state’s or a county’s most highly distressed areas because of a Tribe’s ability to leverage federal dollars related to the federal trust responsibility or income generated from growing tribal enterprises. When tribal governments are able to serve tribal members that may mean the State or local government has some resources freed up that would otherwise have to be dedicated to serving these Oregonians. As an example, for every Tribe that builds a health or dental clinic and is willing to serve tribal and non-tribal members, the State or local government may be able to avoid building their own facility.

Thinking about initiating or improving relations with Tribal governments? Here’s the basis of the Oregon Approach which may provide some guidance and a Partial Checklist for Developing and Maintaining the Local Government-Tribal government –to-government Relationship:

The Oregon Approach encourages state agencies to go on “automatic pilot”—in essence, to ask before adopting a new policy or implementing a new program: Will this agency action affect the interests of tribal government. Should we talk with the appropriate tribal government(s)? When and How?

*Is there value to your constituents (non-tribal and tribal) within your jurisdiction in seeing if there are ways to partner with Tribal governments or to at least stay informed about each other's actions that may have an impact on the other; i.e., to communicate before there is a local government-tribal government "crisis."?

*Do you need a guiding document to start e.g., an MOU, resolution (city and Tribal Council?) committing to building a two-way relationship?

*Do you know the appropriate Tribes you should consider dealing with (i.e., your city/county may be the traditional lands, ceded lands, Congressionally-acknowledged service area of a Tribe whose current government headquarters may be located outside your local government boundaries? Is there more than one Tribal government you should be interacting with given your location? (LCIS Executive Director can assist)

*Do you know the tribal government structure—who you and your staff should be dealing with? (LCIS Director can assist)

*Do you have a key contact in your government who will be the point person for tribal issues? Does this individual have regular communication to brief you and/or assist local government staff in working effectively with local tribal government(s)?

*Would there be any advantages to invite tribal participation when you fill advisory Boards, Commission seats, or when you are planning a local, state, regional or national conference?

*Have you visited the tribal governing Board, toured the reservation, extending a reciprocal invitation to Tribal Leaders and key tribal staff?

*Have you considered "interest based self-assessment" for your local government and considered having a discussion with appropriate tribal governments about any interest-based assessment they may want to share?

*Have you considered having a conversation about the most appropriate way to establish and maintain on-going communication with the Tribal government (quarterly govt-to-govt meetings? Semi-annual? Annual? Leadership level? Program staff level?)

*Do you check the tribal government's website, tribal newspaper, have other ways to keep current, e.g., whether they have had elections and their elected officials have changed?

*Keep in mind that each tribal government is distinct and your experience with one will not necessarily translate into the same type of experience as you may have with another. And, like state and local governments that change priorities potentially every election cycle, so too, may tribal governments with changes in their elected officials.

*Consider the potential advantage of maintaining a positive relationship and effective communication with your tribal government neighbors who have been here for thousands of years and are not going anywhere.