



**CHRISTI JACOBSEN**  
MONTANA SECRETARY OF STATE



September 2, 2022

Jeffery Stiffarm, President  
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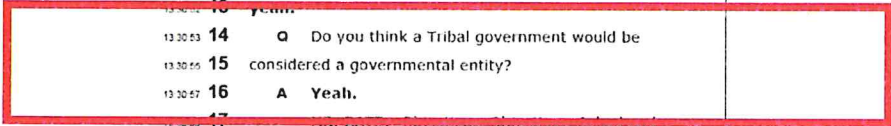
Dear President Stiffarm,

Thank you for your letter.

I appreciate being made aware of a misunderstanding that I wanted to promptly correct. During the trial I was asked to confirm the obvious, that governing bodies of our sovereign tribal nations as government entities. As you correctly noted, the affirmation of tribes being government entities is a basic tenet taught and should be learned early on, especially by Montanans.

After reading your letter, I reviewed the records and rough transcript to identify the questions and answer that your letter appeared to reference. I do recall being asked this question on redirect, which I correctly answered. I was able to locate the exchange in the rough transcript.

13:30:25 5 Q You were asked questions about House Bill 530.  
 13:30:32 6 And House Bill 530 has a governmental exception; is that  
 13:30:38 7 correct?  
 13:30:38 8 A Yeah.  
 13:30:39 9 Q And briefly what is that? Explain how that  
 13:30:45 10 would work.  
 13:30:45 11 A The rule wouldn't apply to a governmental body  
 13:30:47 12 that would be collecting ballots. So the rule can't --  
 13:30:52 13 years.  
 13:30:53 14 Q Do you think a Tribal government would be  
 13:30:55 15 considered a governmental entity?  
 13:30:57 16 A Yeah.  
 13:31:00 17  
 13:31:00 18 answered. Speculation.  
 13:31:01 19 THE COURT: Sustained.  
 13:31:03 20 MR. SMITH: Your Honor, I don't think that was  
 13:31:10 21 asked before.  
 13:31:12 22 THE COURT: We're talking about things in the  
 13:31:13 23 future where lots of people have input in. It's pure  
 13:31:18 24 speculation as what may or may not be included.  
 13:31:20 25 MR. SMITH: Okay. I'll move on.



When I read your letter, the notion that my purported belief was the opposite, which as you correctly pointed out, would be a deeply unprofessional and offensive perspective, my heart sank.

In the course of writing you this letter, I then identified this exchange on this topic from cross examination during the trial:

11:21:50	<b>5</b>	<b>Q</b>	And as you sit here today, you have no idea
11:21:53	<b>6</b>		whether Tribal governments are government entities within
11:21:56	<b>7</b>		the meaning of House Bill 530 Section 2?
11:22:00	<b>8</b>	<b>A</b>	<b>I mean, we haven't done the rule making. I was</b>
11:22:04	<b>9</b>		<b>focused on other things.</b>
11:22:06	<b>10</b>	<b>Q</b>	Not asking you whether you have done the rule
11:22:06	<b>11</b>		making, Mr. James. I'm simply asking, as you sit here
11:22:10	<b>12</b>		today --
11:22:10	<b>13</b>	<b>A</b>	<b>I can't remember --</b>
11:22:11	<b>14</b>	<b>Q</b>	Please just let me finish the question so we can
11:22:13	<b>15</b>		have a clear record.
11:22:14	<b>16</b>		As you sit here today, you have no idea whether
11:22:17	<b>17</b>		Tribal governments are government entities within the
11:22:20	<b>18</b>		meaning of House Bill 530?
11:22:21	<b>19</b>	<b>A</b>	<b>I mean, in my opinion, they are not. But I -- I</b>
11:22:25	<b>20</b>		<b>don't know.</b>

Perhaps it was this unfortunate exchange which led to the misunderstood belief that I held out an inexcusable and erroneous opinion regarding the legitimacy of tribal nation government and sovereignty. I wholeheartedly assure you that I hold no such ignorant belief whatsoever.

To clarify, I was attempting to state my personal opinion as the exact opposite of the concerns raised. I understand that the testimony in the transcript may appear that I was stating that the Tribes would not be considered government entities. That is not what I meant. What I intended when I said "in my opinion, they are not" was that, in my opinion, the Tribes would not be subject to HB 530 because they are government entities.

What I meant by my answer was simply that it is possible for the administrative rules to specify or not specify whether the application of the exception is necessary for tribal governments depending on the rulemaking process. For many reasons, including those specified by your letter, tribal governments are government entities. However, because the process of bringing everyone to the table for a discussion to write the rules has not yet occurred, it is impossible to definitively answer whether the final form of hypothetical rules will have a definition of government entities that specifies tribal governments are government entities. By no means was my opinion regarding the legitimacy of tribal nations ever in doubt.

As indicated by the first exchange above, when plainly asked whether tribal governments are considered a government entity, I promptly and unequivocally answered in the affirmative. I will write a letter to the Court to clarify the record as to leave no doubt.

President Stiffarm, you are right. If this unintended misunderstanding were to go uncorrected, it would be a stain on Montana's history by a state representative vocalizing a truly misinformed and unacceptable perspective. Such a belief would fly in the face of my actions demonstrating the very opposite. As an example, my legal opinion provided to the agency in the course of building its new business filing system was to ensure it facilitates foreign jurisdiction corporate filings by entities lawfully established under tribal law.

Please know my gratitude, President Stiffarm, that you promptly and properly called attention to this issue and the severity of such a representation. As you know, ignorance is not and will not ever be a valid excuse to question the legitimacy of the Tribes by a representative of the State of Montana.

Throughout my life I have continually sought to gain deep understanding and education of Indian Country cultural traditions, practices, and history. However, it would be an honor to learn from Indian tribes in Montana and experience an even greater understanding regarding all aspects of every tribal nation. I give you my word to reach out to every Tribe. I consider it a duty and a privilege as a Montanan, let alone a representative of the State, to learn as much as possible about tribes and the issues pertaining to Indian Country.

I hope to meet you and the honorable members of the FBIC council soon. I want to earn your trust and belief in me as a friend of FBIC and Indian Country. I hope this letter has cleared up any confusion about my views on tribal sovereignty and, specifically, that the Tribes are unambiguously governmental entities. I would welcome the opportunity to discuss this issue with you further to make sure that you have no doubt about my views on this topic.

Thank you again for allowing me to correct the misunderstanding.

Sincerely,



AUSTIN MARKUS JAMES  
Chief Legal Counsel

AMJ:sba