



Police harass smoke shop in prelude to tax crackdown

Posted: January 13, 2006

by: Jim Adams / Indian Country Today

POOSPATUCK RESERVATION, LONG ISLAND, N.Y. - Police cruisers from Suffolk County have been ringing inlets to the Unkechaug Indian Nation reservation since mid-December in an open attempt to drive away customers of the tribe's four smoke shops.

The siege has raised tensions among the 450 tribal members, 250 of whom live on the 55-acre reservation near Mastic.

Unkechaug Chief Harry Wallace called the campaign the opening wedge for enforcement of statewide taxation of reservation sales to non-Indians, scheduled to go into effect March 1. "They're practicing," he told Indian Country Today.

New York Gov. George Pataki suspended the last state attempt to tax reservation sales in 1997, after widespread resistance from tribal members closed interstate highways and led to violent confrontations with state police. The Unkechaug and Seneca nations are credited with sparking the resistance. After lobbying by convenience store and gasoline station associations, however, the state Legislature in 2003 passed a law over Pataki's opposition reviving the reservation tax regulations.

Although state officials have been preparing for months to enforce the regulations, they have distanced themselves from the local action against the Unkechaug, one of the two state-recognized Algonquin tribes of eastern Long Island. But Suffolk County District Attorney Thomas J. Spota has drawn the connection.

Uniformed Suffolk County officers have handed out leaflets stating - inaccurately, say tribal officials - that "the possession of untaxed tobacco is ILLEGAL!" The leaflets bear the seal of the Suffolk County district attorney and its police department and go on to say that penalties for possessing and transporting untaxed tobacco include jail time, fines and seizure of the vehicle. At the bottom they state: "In cooperation with: New York State Department of Taxation and Finance."

"The flyer misstates the law," retorted Wallace. "It is inaccurate and purposefully vague."

Although Spota has told the press he is cracking down on illegal bulk resale of the untaxed cigarettes, Wallace said that he was also intimidating lawful trade. "Ninety-nine percent of our customers come in to purchase cigarettes for their personal use," he said, "which is not illegal in New York."

The tribe has countered with its own flyer, charging that "the tactics of the Suffolk County Police Department in cooperation with the New York State Department of Taxation and Finance is designed solely to intimidate and harass lawful citizens.

"Instead of trying to intimidate us, they should work with us to make sure NO crime is committed."

A spokesman for state Attorney General Eliot Spitzer said his office was not involved in the Suffolk County action. But Spitzer, a likely Democratic candidate for governor this year, has quietly been making his own preparations to enforce the tax regulations.

Late last April, he began a probe of the state's cigarette stamp agents, licensed wholesalers who pay the \$1.50 per pack state excise tax by buying stamps from the state and affixing them to the packs they then sell down the distribution chain. The 20 or so stamp agents also sell untaxed cartons to exempt organizations, such as Indian reservations. State law names nine reservations, those of the federally recognized Iroquois nations and the state-recognized Unkechaug and Shinnecock of Long Island.

Spitzer originally said he was concerned with Internet and mail-order sales, and the danger that cigarettes would fall into the hands of minors or fail to be "fire-safe." His press releases avoid mention of reservation sales. But a recent enforcement action draws a direct link to the upcoming tax regulations.

On Nov. 7, Spitzer released an assurance of compliance with Harold Levinson Associates Inc. of Farmingdale, one of the largest stamp agents. In paragraph 21, it specifies that if the regulations go into effect as scheduled on March 1, "HLA shall not sell any Unstamped Cigarettes to any Indian Nation, Tribe or member thereof."

Under the regulations, the tax department would provide tribes with coupons for the estimated cigarette consumption of their smoking members. Tribal smoke shops would turn in these coupons to the taxing agents for a rebate on the tax.

The Department of Taxation claims this scheme passed muster with the U.S. Supreme Court in the 1994 New York Department of Taxation v. Milhem Attea & Brothers case. The Pataki administration has also offered an alternative of negotiated tax compacts with reservations, but this approach dropped from sight in the general collapse of land claims settlements last year.

Instead, the most visible harbinger of the upcoming tax deadline is the line of Suffolk County police cruisers that drew up with flashing lights on the Poospatuck reservation boundary in mid-December. Wallace said he has worked to keep tribal members calm and avoid confrontation. Only one Unkechaug member, Ernestine Watkins, has been arrested so far, on a charge of hitting a police officer's leg with her car.

Watkins will face charges of reckless endangerment, said the Spota's office. She is scheduled for arraignment Feb. 16 at the 1st District Court in Central Islip. Watkins' husband owns Monique's Smoke Shop on the reservation.

Watkins said she will fight the charge through the courts. Even if the prosecutors offer an easy way out, she said, "I'm not going to drop it."

Wallace said the tribe is examining legal action against Suffolk County officials.