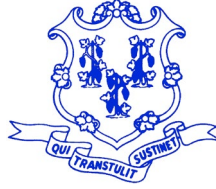


The Connecticut General Assembly



Working Group to Examine the Taxation of
Federally Recognized Tribal Nations

MEETING NOTES

TUESDAY, SEPTEMBER 19, 2023

1:00 PM IN ROOM 1A OF THE LOB AND ZOOM AND [YOUTUBE LIVE](#)

Members in Attendance:

Jeffrey Beckham, OPM Secretary, Chair
Sen. Cathy Osten, Appropriations Committee
Rep. Toni Walker, Appropriations Committee
Rep. Tammy Nuccio, Appropriations Committee
Rep. Maria Horn, Finance, Revenue and Bonding Committee
Sen. Henri Martin, Finance, Revenue and Bonding Committee
Rep. Holly Cheeseman, Finance, Revenue and Bonding Committee
Rep. Eleni Kavros-DeGraw, Planning And Development Committee
Jody Cummings, General Counsel, Mashantucket Pequot Tribal Nation
Betsy Conway, Senior Legal Counsel, Mashantucket Pequot Tribal Nation
Jean Swift, CFO, Mashantucket Pequot Tribal Nation
Larry Roberts, Attorney General, Mohegan Tribal Nation
Ronald McDaniel, Mayor, Town of Montville
Fred Allyn, Jr., Mayor, Town of Ledyard

The meeting was called to order at 1:02 pm by Secretary Beckham.

Secretary Beckham asked for a motion to approve the July 25, 2023 meeting notes. Senator Martin asked for the meeting notes to be updated to reflect his attendance. A motion was made by Sen. Osten, seconded by Rep. Horn to approve the meeting notes, as updated. The motion carried.

Secretary Beckham then asked the team from the Mashantucket-Pequot Tribal Nation (MPTN) to give their presentation regarding the Tribe's perspective on taxation issues. The presentation was given by Jean Swift, Jody Cummings and Betsy Conway (link to presentation [here](#)).

Following the presentation by the MPTN team, a presentation was given by Jonathan Taylor, whom the MPTN invited to examine the economic development impact of dual taxation (link to presentation [here](#)).

Representative Horn commented on how focused she found the MPTN presentation and expressed her gratitude for the clarity it provided. She asked if local taxation posed issues to the Tribe's ability to self-govern. Betsy Conway replied that part of self-governance is the ability for the Tribe to create its own tax policy, so in that regard local taxation does hinder self-governing.

Representative Horn then asked Ms. Conway to explain the MPTN's taxation system for tribal-owned properties. Ms. Conway responded that with the exception of a minor tax on residential homes (\$75) there is no tax on tribal members on the reservation.

Ms. Conway added that, with regard to the non-Indian companies that do business on the reservation, the Town of Ledyard, not the Tribe, taxes all that is not considered real property. She added that any additional tax imposed by the Tribe would discourage companies from doing business with the MPTN.

Representative Walker expressed her appreciation of the presentations. She asked Ms. Conway how long the towns have been levying the taxes. Ms. Conway replied that at least since 2006, and that the tax has been increased since 2013. She stated that it was her understanding that as outside, non-Indian companies started doing business on the reservations, the premise was that the towns had the right to tax non-Indian owned property.

Representative Walker asked for confirmation that the federal government provides money to the municipalities for the education of tribal children. Ms. Swift confirmed that the Town of Ledyard receives \$1.6 million in impact aid. Mr. Cummings added that the federal impact aid is provided for "federally connected" children, which includes children on the reservation and children of military members. Ms. Conway explained that the money is going to the Town of Ledyard because the federal government chose to provide aid to help with the education funding of children whose families that are exempt from paying property taxes to the municipality.

Representative Walker then asked if there was representation by tribal members on the Ledyard Town Council or Board of Education (BOE). Ms. Swift replied that the tribal council has encouraged tribal members to serve on the Board of Education. She believes that 1 to 2 tribal members currently serve on the BOE, which is a newer development in the Tribe's involvement in Ledyard town government.

Rep. Cheeseman inquired as to what revenues are derived from the businesses that operate on the reservation. Ms. Swift responded that typically the lease agreements are hybrid – a base rate plus a percentage of sales that is usually laddered.

Rep. Cheeseman asked about the \$665,000 in personal property tax revenue currently collected by the Town of Ledyard, and if the revenue includes the Great Wolf project or if the tax is levied based on the current businesses that operate on the reservation. Ms. Swift responded that they are based on the current companies doing business.

Mayor Allen addressed the \$1.6 million in federal impact aid. He shared that their most recent number is 150 children coming from Mashantucket attend Ledyard schools. That amounts to \$5,240 of impact aid per child, while the per pupil costs in Ledyard are about \$16,500. He explained that accounting for the federal impact aid, monies received from the Education Cost Sharing (ECS) grant, and the personal property tax revenue collected, the sum total is still far below the \$4.9 million in educational expenses. Mayor Allen stated that if the Town of Ledyard were to be made whole regarding the educational expenses, there would be "a different story to be told". He offered to share the numbers on the calculation of educational expenses.

Mr. Cummings remarked that he would welcome seeing Ledyard's calculations. He asked if the \$4.9 million cited was the cost of educating just the tribal reservation children in Ledyard schools. Mayor Allen replied that the number includes the 150 children, plus special education costs. He added that the special education costs have been calculated at an average of \$50,000 per pupil.

Senator Martin asked Ms. Conway to explain the Department of Revenue Services (DRS) ruling regarding taxation on the reservation. Ms. Conway explained that the DRS revenue ruling provides the guidance in determining tax payments to the State. She stated that DRS had identified 11 or 12 issues, such as "Can the State tax meals on the reservation?", for which they determined that only the Tribe could tax meals. She added that the DRS ruling provides for the 6.35% state sales tax on clothing sold at the Tanger Outlets to be collected by the DRS.

Senator Martin inquired about the treatment of personal property in the DRS ruling. Ms. Conway responded that DRS did not address personal property in its ruling, just the sales and use tax. She added that DRS has stated that the issue of taxation of personal property is not their area to address because the agency sees it as an issue for the municipalities to consider, not the State.

Secretary Beckham then called on Larry Roberts, Attorney General of the Mohegan Tribal Nation (MTN), to give his presentation.

Attorney General Roberts stated that Mohegan Tribal Nation would be providing responses to the questions posed by Secretary Beckham at the July 25 meeting, and that he would be prepared to discuss them at the next working group meeting.

Mr. Roberts shared his professional background in working on tribal nation issues throughout the country. He spoke of his experiences working for the Justice Department on litigation issues. He stated that the takeaway from that work was

that litigation leads to acrimony, and that it is better for parties to sit around a table to find solutions.

He shared with the working group that the MTN is supportive of the group's efforts to bring fairness and parity to taxation on Indian lands. Further, he expressed the MTN's appreciation for the opportunity to engage with the various stakeholders at the table to reach a solution that will be fair and equitable.

With regard to the MTN's perspective on the Tribal Advisory Committee Report on Dual Taxation, Attorney General Roberts commented that the effort being undertaken by the working group is extremely important. He stated that taxation issues on the federal level involving the respective taxing authority of states in Indian country are difficult issues to address. He added that a contributing factor to the level of difficulty is the balancing of interests test applied by the courts, which is inherently inconsistent, as two judges can look at the same issue and arrive at different results.

Mr. Roberts shared that Congress has, from time to time, taken action that does not apply the courts' balancing of interests test. He cited as an example the Indian Gaming Regulatory Act, about which Congress looked at the unique interests of the various tribes and put the tribes on an equal and fair playing field.

Regarding potential federal action, Mr. Roberts informed the group that he was not aware of any pending federal legislation or rulemaking regarding dual taxation, which makes the work of this group very important.

Mr. Roberts stated that the Tribal Advisory Committee report reflects the federal approach of parity among tribal nations, taking into account the tribes' unique circumstances. He shared that federal law prohibits the federal Executive Branch from classifying, enhancing, or diminishing the rights of one tribe vis a vis another tribe. Further, Mr. Roberts commented that the report calls out the disparity among states regarding how they deal with the issue of dual taxation. He shared that the report contains examples of states such as Nevada that are working with tribes to meet their unique circumstances. Additionally, he remarked that the report not only highlights the economic impact of tribes, but addresses the importance of parity not only among states, but the need for tax parity among tribes. Mr. Robert stated that the MTN seeks parity and fairness. He cited the recent sports betting legislation as an example of the legislature treating both the MPTN and MTN with parity and fairness.

Mr. Roberts then spoke of the recent history of the Mohegan Tribal Nation. In 1977, the Tribe filed a land claim to against the State to return its aboriginal lands that were unlawfully taken in violation of federal law. While the Mohegan government pre-dates the United States, it had to petition the Department of the Interior for federal acknowledgement in 1978, which was a long and slow process that was met by strong opposition from the State of Connecticut's Office of the Attorney General and the Town of Montville. In 1994, the Department of the Interior recognized the Mohegan Tribe for its inherent sovereignty that it had and continued to maintain from the time of first non-Indian contact to today.

He then shared that in the wake of the opposition of the State and the Town of Montville, the Tribe was presented with a "Hobson's Choice" – enter into signed agreements with the State and the Town of Montville to resolve the challenges or don't sign the agreements and face lengthy litigations. Mr. Roberts stated that under the settlement agreement with the State of Connecticut, the Tribe did not receive land. In addition, the agreement required the Tribe to pay the State \$3 million to repurchase its burial grounds. Further, the Tribe agreed to extinguish claims to its homelands and agreed to make payments in lieu of taxes on any real property over the 700 acres placed in trust, dollar for dollar unless otherwise provided in a local agreement. Mr. Roberts pointed out that 700 acres is not a lot of land and makes Mohegan one of the smallest reservations in the country. He continued by sharing the issues agreed to by the State and the issues agreed to by the Town of Montville.

Mr. Roberts stated that the agreements talk about taxation. He shared that Mohegan's concern is that the CT General Assembly will pass legislation that does not address the agreements the Tribe has with the Town of Montville, which would put the MPN into litigation with the town.

He reiterated Mohegan's support of the ending dual taxation and finding a solution that works for all parties and that is fair and equitable. Mr. Roberts stated that through the working group the legislature is trying to resolve wrongly decided litigation and unfair settlement agreements. He ended his remarks by stating that Mohegan is committed to finding a solution.

Secretary Beckham asked for confirmation from Mr. Roberts that the MTN would seek resolution regarding their settlement agreements in order to support the end of dual taxation. Mr. Roberts responded that without taking the settlement agreements into account, he believes that the legislation would create litigation.

Secretary Beckham then discussed the use of the term "dual taxation" in these discussions, stating the issue is not truly dual taxation, rather that the MPTN desires that they have the sole authority to tax or not. Ms. Conway replied that the term "dual taxation" is used because it addresses the threat of an entity being dually taxed.

Representative Walker asked Attorney General Roberts for clarification of what the MTN would need resolved in order to support legislation. AG Roberts stated that Mohegan's concern is that the Town of Montville would seek to enforce its agreements with Tribe if those settlement agreements are not addressed first. He added that Montville would want to be made whole for the lost revenue, which Mohegan would support. Rep. Walker stated that there is a myriad of issues and concerns that will have to be looked at as the legislature seeks a resolution. Mr. Roberts reiterated Mohegan's concern that they not be placed in a situation where they are engaged in litigation with the Town of Montville.

Representative Walker stated her belief that allowing one entity to impose taxes on another and then not provide services to the taxed entities is wrong. She shared that she has been shocked to learn that the MPTN does not receive municipal services for the tax dollars they are assessed.

Rep. Horn asked if either tribe had taken a position on Nevada's taxation policies. Mr. Cummings replied that the MPTN has not had internal discussions regarding Nevada's approach. Mr. Roberts commented that the Mashantucket team had done a wonderful job of laying out options employed by other states. He commented on the Michigan model, where the state not only has uniform agreements with the tribes, but also has individual agreements that consider the unique circumstances of the tribes.

Representative Cheeseman sought further clarity regarding the Mohegan's concerns concerning the potential of litigation should the legislature end dual taxation. She asked AG Roberts if she was correct in her understanding that Mohegan's position is that, if the terms of the MPN's agreement with Montville were to be violated due the legislature ending the ability of the town to tax real personal property on tribal land, the Tribe fears that the result would be litigation unless the State of Connecticut committed, in perpetuity, to make Montville whole. AG Roberts responded that Rep. Cheeseman's understanding of Mohegan's concern is correct. With regard to the remedy needing to be in perpetuity, Mr. Roberts stated that the government entities involved would negotiate to work through the issues to find a solution that may or may not necessitate the solution be adopted in perpetuity.

Mayor Allyn and Ms. Conway discussed the imposition of a sales tax by the MPTN on the sale of clothing at the Tanger Outlets, with Mayor Allyn questioning if that practice was, in fact, dual taxation. Ms. Conway stated that the practice does amount to two sovereigns taxing the same thing. She added that, to date, it appears that the practice has not decreased competition for retail sales. Ms. Swift clarified that the Tribe institutes a 7.35% sales tax, and then forfeits to the State the tax revenue equal to the state sales tax rate of 6.35%

Secretary Beckham posited that if the dual taxation regarding real personal property were to be eliminated, wouldn't that beg the question regarding the dual taxation of retail sales items. Ms. Conway replied that in order to avoid litigation, the MPTN made an agreement with the State to forego the sales tax on retail items as described by Ms. Swift. She further explained that the revenue ruling looked at retail sales as a product being brought on the reservation and then being taken off the reservation. Ms. Conway added that the issues involved in the revenue ruling are examples of sovereigns coming together to find solutions in a fair and equitable manner. She stated that the issue for the MPTN regarding the taxation of real personal property is that another sovereign (Ledyard) is taking tax revenues without providing services to the reservation, which the Tribe deems unfair and not equitable.

Secretary Beckham then raised the issue of the state income tax. Ms. Conway replied that as the income tax applies to tribal members, there could be an issue. She agreed that all of the taxes would have to be looked at, as there are issues inherent in each one.

Secretary Beckham asked Ms. Swift to discuss MPTN's operating and capital budgets. Ms. Swift explained that the \$25 million cited is the amount budgeted for

the operation and provision of services on the reservation. Funding for the capital budget is derived from the earnings the Tribe receives from tribal businesses. She further explained that the Tribe has had to defer maintenance, resulting in areas of their infrastructure being strained.

Secretary Beckham asked if the need for additional tax revenue is related to infrastructure or as an economic development tool to incentivize businesses. Ms. Swift responded that the primary issue is about tax sovereignty to make those decisions. She stated that while she would anticipate the Tribe taking a hybrid approach, as CFO she would want to see deferred maintenance be made a priority. Ms. Conway added that the Indian Gaming Regulatory Act is prescriptive on how gaming revenues are to be used to support the tribal government services. Tribal nations need to find other sources of revenue through businesses or taxes when they can to fund other activities. Mr. Roberts concurred with Ms. Conway's remarks, and spoke of the unmet needs that each tribal nation faces, with housing being one of the greatest needs for the MTN.

Secretary Beckham suggested the agenda for the next meeting include the perspectives of the mayors of Ledyard and Montville. AG Roberts confirmed that he will submit written responses to the July 25 questions prior to the next meeting. The administrative staff was charged to schedule the next meeting in approximately 30 days.

Seeing no further business, the meeting was adjourned at 2:54 pm.

Respectfully submitted,

Susan Keane
Appropriations Committee Administrator