



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E.  
Aberdeen, South Dakota 57401



IN REPLY REFER TO:

Tribal Government Services  
MC-304

May 22, 2009

The Honorable Myra Pearson  
Chairperson, Spirit Lake Tribe  
P.O. Box 359  
Fort Totten, North Dakota 58335

Dear Chairperson Pearson:

The Constitutional Amendments from the April 3, 2007, Election will not be approved prior to the swearing in of new officers. The court case you provided, *Gourd, Sr. v. Longie* (Spirit Lake Tribal Court February 18, 2002) is very instructive; however, we need to check with the Court to ensure this case is still good law. I did attempt to contact Myra Hunt, Clerk of Court, Spirit Lake Tribal Court, to confirm that this case was not appealed and is a final decision. I was informed she was on leave and would not return until Tuesday, May 26, 2009. If this case is not a final decision and has been appealed, we will need the related Court of Appeals decision in order to make a final determination. If this case is a final decision and still good law, we are still left without a valid number from which to figure whether the vote meets the 20% threshold.

What this case, if good law, says is that a resident qualified voter is anyone who is an enrolled member, 18 years of age or older, and resided on the Reservation for more than a year prior to the election. In this light, it seems very unlikely that the Constitutional Amendment Election of April 3, 2007 yielded a high enough turnout to meet the Constitutional Amendment threshold.

Although the *Longie* case cites the BIA Labor Force Report as a proffered source to determine that number, our copy indicates two flaws with this source. One, the age categories are split not at the age of 18, but at the age of 16 and two, the population is defined as "on or near" and not as only those "on" the reservation. See enclosed 2005 BIA Labor Force Report at page 8. The number of on or near population over the age of 16 totals 3,650 individuals. By definition, some of these individuals would be 16 and 17 year olds and/or individuals who do not live on the reservation. We cannot determine the valid qualified resident voters from this data.

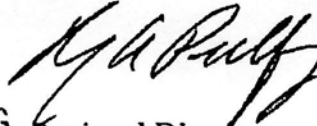
Unlike the *Longie* case, we do not have a number from the Election Board or Tribal Council from which to calculate the 20% threshold. At the time of the *Longie* ruling, using the Election Board numbers from 2002, the Tribe reported 1,725 qualified resident voters; 20% of this number would be 345 voters. The April 3, 2007 Election would not have met the 20% requirement using the lowest number from the *Longie* case. Does any newer Tribal data indicate that the number of qualified resident voters has declined from the 2002 *Longie* figure?

It seems highly unlikely that we would receive both the information regarding the finality of the *Longie* decision and an appropriate qualified resident voter number from the Tribe prior to the swearing in on Tuesday, May 26, 2009 and that those officials sworn in would be subject to the term lengths in the Constitution without the unapproved Amendments from the 2007 Election. We, therefore, decline to approve the April 3, 2007 Amendments prior to the March 26, 2009 swearing in.

We will refrain from issuing a final decision until June 22, 2009. Should we approve the 2007 Amendments on or before June 22, 2009, those term limits will only apply to future elections. This will allow the Tribe time to analyze the *Longie* case, its own data in light of the *Longie* case (assuming it is a final decision), and to report to us if their analysis reveals a sufficient decline in qualified resident voters from the data as reported in this 2002 Tribal Court decision.

If you have any questions, please contact Dani Daugherty, Tribal Operations Specialist, at (605) 226-7376.

Sincerely,

  
ACTING Regional Director

Enclosure

cc: Superintendent, Fort Totten Agency