



Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

May 23, 2011

Governor Susana Martinez
State Capitol – Fourth Floor
Santa Fe, New Mexico 87503

Re: Cabinet Secretary of Indian Affairs Designee: Arthur Allison

Dear Governor Martinez,

I am writing to let you know that my office has discovered information regarding your designee for the Cabinet Secretary of Indian Affairs, Arthur Allison, that raise a number of concerns. As described below, these concerns center around a business owned by Mr. Allison, who stands to reap a significant financial gain as a result of your veto of Senate Bill 397.¹ I am forwarding a copy of this letter to your Taxation and Revenue Department, because we have learned that Mr. Allison is aiding and abetting the sale of contraband into New Mexico, and is also aiding and abetting the avoidance of tax and escrow liability for the contraband distributors and manufacturers, in direct violation of the Cigarette Tax Act and the Escrow Fund Act.

Mr. Allison owns the Star Ranch Store, located at the corner of Highway 371 and Country Road 7010, near Farmington, New Mexico. Star Ranch sells, among other things, cigarettes. Star Ranch Store sells brands of cigarettes that are illegal contraband in New Mexico.² In fact, there are one small and two large banners outside the Star Ranch Store that advertise the Seneca brand of cigarettes. Seneca brand cigarettes are manufactured by a very large tobacco

¹ As you will recall, in my letter to you dated March 17, 2011, I requested a meeting with you to discuss this legislation and to urge your support, as it would assist in the control and tracking of contraband tobacco products, as well as assist in recapturing some of the health-care costs paid by the state as a result of smoking.

² It is unlawful to sell or possess for sale cigarette brands that are not on the New Mexico Attorney General's Tobacco Directory of brands approved for sale in New Mexico. See the New Mexico Attorney General Web-site, located at: <http://www.nmag.gov.office/Divisions/Lit/Tobacco/Default.aspx>. The directory is not merely for the purpose of ensuring that cigarette manufacturers that sell into the state pay the proper escrow due, but also helps to ensure that the cigarettes brought into the state have been approved by the FDA, for health reasons.

manufacturer in Canada, Grand River Enterprises. Grand River Enterprises is not licensed to sell its products in New Mexico. In fact, New Mexico has an outstanding judgment against Grand River Enterprises. Grand River Enterprises cigarettes, (including the Seneca brand) have been found in New Mexico in vast numbers, and New Mexico has sued one of their distributors, Native Wholesale Supply, a non-native entity operating out of New York. Grand River Enterprises and its distributors have been so flagrant in violating New Mexico law that its brands are at the top of the Attorney General's Tobacco Directory "Do Not Sell" list.³

In New Mexico, tribes are required to sell to non-members only cigarettes upon which excise tax has been paid, as evidenced by an excise tax stamp, unless the tribe have certified to the New Mexico Taxation and Revenue Department that they will charge a 75 cent tribal tax on each pack sold to non-members, as denoted by a tribal tax credit stamp. NMSA 1978, §§ 7-12-4(A)(2) and 7-12-4.1. Since Mr. Allison's store is on Navajo property, and the Navajo nation has not certified that they will charge a 75 cent tribal tax, all sales on Navajo property to non-members must have an excise stamp affixed, ensuring that the distributor has paid full state excise tax of \$1.66 per pack. NMSA 1978, § 7-12-3.

In either case, these cigarettes must be purchased through stamping distributors that are licensed in New Mexico to stamp cigarette products and sell to retailers. NMSA 1978, § 7-12-9.1(A). Purchasing from a New Mexico licensed distributor helps to ensure that all state laws with respect to tobacco have been complied with, particularly with respect to sales to non-members. Any cigarettes sold in New Mexico that does not meet these requirements are considered contraband, and their sales in this state are not legal. See NMSA 1978, §§ 6-4-22(A)(2) and (D), and 7-12-2(C).

A recent visit to the Star Ranch Store revealed that none of the cigarettes in the store had excise stamps affixed. The store sold unstamped, untaxed cigarettes to non-tribal members. Many products had no stamp, which is contrary to New Mexico law that all cigarette packs bear a stamp, to identify which tax category applies to that particular sale; an excise stamp, a tribal tax credit stamp or an exempt stamp. NMSA 1978, § 7-12-5(F). Others had a tribal tax credit stamp, which is not currently permitted on sales on the Navajo reservation. Yet others

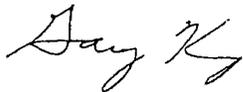
³ The Supreme Court has long held that states have the authority to regulate tobacco sales on tribal property if those sales are to non-members of the tribe on which the product is being sold. See, e.g. Washington v. Confederated Tribes of the Colville Indian Reservation, 477 U.S. 134 (1980) (holding that a state may impose a non-discriminatory tax on sales to non-members of a tribe, and that the state may impose minimal burdens on the tribal entity to aid in enforcement and collection of such a tax); Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505 (1991) (holding that the state was free to tax sales on tribal land to non-members. New Mexico has passed a statute to regulate such sales in the form of NMSA 1978, §§ 7-12-1 through 7-12-5.

Governor Susana Martinez
May 23, 2011
Page 3 of 3

credit stamp, which is not currently permitted on sales on the Navajo reservation. Yet others contained a false "Native American" stamp, which is not approved for use in New Mexico. Many of the products sold in the store are not on the Attorney General Directory of Cigarettes approved for sale in New Mexico.

We are not providing you legal advice with this letter. The information is provided as a courtesy regarding one of you cabinet designees. Thus, this letter is a public document and if requested, is subject to public inspection. Please contact us if you have any questions or would like more information.

Sincerely,



Gary King
Attorney General of New Mexico

cc: Demesia Padilla, Cabinet Secretary, Taxation and Revenue Department