



Washington State Liquor Control Board

Government-to-Government Consultation Board Policy #11-2009

PURPOSE

The Centennial Accord and New Millennium Agreement establish a framework to support the development of strong government-to-government relationships between state agencies and federally recognized Indian Tribes. A key element of both the Centennial Accord and the New Millennium Agreement is the parties' commitment to develop clear policies to ensure cooperation and communication on issues of mutual concern and interest. The optimal goal of government-to-government consultation is to create a framework under which individual Tribes and Tribal entities and the Liquor Control Board (LCB) can actively engage in identifying, consulting, and addressing issues of mutual concern.

The LCB is committed to work cooperatively with Tribes and Tribal entities on licensing, enforcement, and taxation issues in a manner that respects the sovereignty of each party. Further, the LCB will make every effort to allow any Tribe interested in owning and operating a tribal liquor store to do so, and where appropriate to public safety, the LCB will make every effort to allow an interested Tribe to operate multiple stores. For any Tribe not owning or operating its own store, the LCB will make every effort to provide an alternative agreement to allow the Tribe to supply its own tribal licensees and capture its tribal member tax exemption. The LCB will make every effort to negotiate in good faith a Tribal Vendor Agreement and/or Tribal Alcohol Agreement with an interested Tribe, and to consult and resolve in good faith taxation issues within the Board's jurisdiction.

This policy is meant to encourage early and/or informal information sharing and other communications on topics that facilitate intergovernmental relationships. Ideally, regular ongoing communications will simply evolve into more formal consultation as necessary, shifting back to a less formal style once consultation on a particular action or topic is complete.

BACKGROUND

The Liquor Control Board (LCB) is an executive agency under the Governor which was formed in 1933 by the Steele Act to regulate the importation, manufacture, distribution, and sale of alcohol. The 21st Amendment to the U.S. Constitution, which repealed Prohibition, gave states the right to regulate alcohol as they saw fit. Many states, including Washington, adopted control systems creating a state monopoly on the sale of some, or all, alcoholic beverages in an attempt to ensure higher levels of public safety and controlled distribution. The LCB uses the following control state principles when making decisions about licensing and allocating liquor stores:

- Limited number of stores
- Limited store hours
- Higher prices produce lower consumption
- Enforcement and licensing are coordinated
- No employee incentive to sell
- Advertising is prohibited
- More revenue returned to state

The Liquor Control Board's mission is to *"contribute to the safety and financial stability of our communities by ensuring the responsible sale, and preventing the misuse of, alcohol and tobacco."* The LCB's programs include licensing; enforcement and education; product and retail sales.

There are 29 federally recognized Indian Tribes within the State of Washington. Each Tribe has inherent sovereign authority as a government and each has interests and responsibilities related to preventing the misuse of alcohol in Indian Country, controlling the use and sales of these products in Indian Country, coordinating regulatory oversight, and ensuring the safety of its tribal citizens and others in Indian Country. Each Tribe has its sovereign authority to adopt tribal laws and regulations to regulate the use and sale of alcohol on tribal lands.

In 2009, the LCB and representatives for 14 Tribes held several meetings to discuss tribal issues such as licensing; liquor store siting and allocation; and cost models for state, contract, and tribal liquor stores. The meetings were used to identify core tribal concerns and build a foundation for how the LCB would collaborate with the Tribes on future issues. This government-to-government consultation policy is a result of the meetings and sets the framework for how the LCB will consult with the Tribes on liquor and licensing related issues.

COMMITMENT TO CENTENNIAL ACCORD PRINCIPLES

The LCB is fully committed to the principals of consultation and cooperation memorialized in the 1989 State/Tribal Centennial Accord. The sovereign status of Tribes and the complex nature of jurisdictional issues regarding Indian Country require a sound working relationship between Tribes and the State. The LCB acknowledges that implementation of the Centennial Accord is an on going process and pledges to work on a day-to-day basis to foster our government-to-government relationship with individual Tribes.

In order to continue the dialogue created through the Centennial Accord and the New Millennium Agreement on issues of mutual concern related to the sale and regulation of alcohol in Washington, the LCB will work with Tribes to establish a calendar of regular consultation meetings in order to establish opportunities to meet and consult on issues of mutual concern affecting the use and sales of alcohol.

DEFINITIONS

Collaboration: To work together, in an intellectual effort.

Consultation: An enhanced form of communication which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision-making.

Government-to-Government Relationship: The relationship that exists between federally recognized tribes and the state government. Implicit in the relationship is a recognition of tribal sovereignty as individual nations within the United States and the United States government's obligation to protect tribal lands.

License Issuance or Renewal: The process by which the LCB issues, renews, or denies a liquor license. The process includes "notice to local authorities including tribal governments," prompting them to comment on, or object to, the issuance or renewal of a liquor license.

Indian Country: As defined by federal law, Indian Country includes all land within the limits of any Indian reservation or trust lands under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. In addition, Indian Country also includes all dependent Indian communities as well as all Indian allotments to which Indian titles have not been extinguished and lands held in trust for the benefit of a Tribe by the United States.

Tribal Alcohol Agreement: A signed government-to-government agreement entered into by a Tribe and the LCB that provides tax exemptions based on tribal membership for the purchase and sale of spirituous liquor in accordance with tribal, state and federal laws.

Tribal Vendor Agreement: A signed government-to-government agreement entered into by a Tribe and the LCB to provide for off-premise retail purchase and sale of spirituous liquor on tribal lands in accordance with tribal, state, and federal laws.

Sovereignty: The historical and legal status, dominion, rule or power of a sovereign. Tribes have the power to make and enforce laws for their Tribe and within their jurisdiction and to establish courts and other forums for resolution of disputes.

CONSULTATION

The LCB is committed to consulting with Tribes on licensing, enforcement, and taxation policy issues within the jurisdiction of the Board that affect our respective governments. The agency's goal is to provide early notification regarding issues pertaining to licensing or store siting and an open invitation for consultation on all decisions that may affect tribal rights and interests. Consultation with Tribal governments will occur independent of any public participation process but representatives of Tribal governments and tribal members have equal access to the agency's public participation process.

The LCB will work with Tribes to establish regular meetings held preferably on a quarterly basis to discuss issues and concerns about the alcohol regulation and policy within Washington. The agenda for the meeting will be set by agreement between the LCB and interested Tribes. LCB staff will facilitate the setting of agendas.

TRIBAL VENDOR AGREEMENTS

A Tribal Vendor Agreement (TVA) is the mechanism utilized for the retail sale of spirituous liquor on Tribal lands for off-premises consumption. A TVA is a negotiated agreement between a Tribe with the LCB staff that is particular to conditions and circumstances of the Tribe, its members, lands, and community.

The LCB will negotiate in good faith towards a TVA when a Tribe contacts the LCB's Business Enterprise Division. The scope of a TVA may include all topics relevant to the purchasing and retail sales of spirituous liquor for off-premises consumption. The TVA may also include tax sharing provisions as agreed by the parties.

TRIBAL ALCOHOL AGREEMENTS

A Tribal Alcohol Agreement (TAA) is the mechanism utilized for retail sale of spirituous liquor on tribal lands by the Tribe to a tribal licensee and to provide a Tribe without a liquor store to capture the tribal member tax exemption. A TAA is a negotiated agreement between a Tribe with the LCB that is particular to conditions and circumstances of the Tribe, its members, lands, and community.

The LCB will negotiate in a good faith towards a TAA when a Tribe contacts the LCB's Business Enterprise Division.

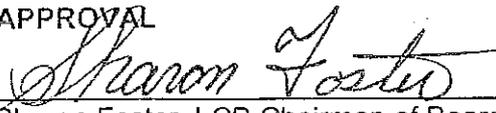
LICENSING OF TRIBAL ON/OFF-PREMISES SALES IN INDIAN COUNTRY

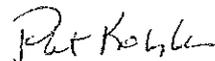
The LCB will negotiate with interested Tribes for a memorandum of agreement that will be utilized for regulating the sale and service of alcohol in Indian Country.

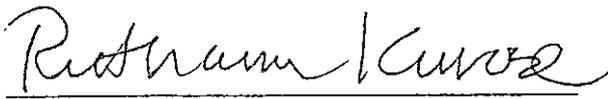
DISPUTE RESOLUTION PROCESS

The LCB and its staff shall immediately bring Tribal disputes to the attention of the Administrative Director. Specific issues are routinely routed to the Tribal Liaison for mediation, coordination, and facilitation as necessary. The LCB is committed to resolving disputes in a manner that is respectful of the sovereign authority of Tribes.

APPROVAL


Sharon Foster, LCB Chairman of Board


Pat Kohler, LCB Administrative Director


Ruthann Kurose, LCB Board Member