

## MEMORANDUM

**To:** Jim Denney, Executive Director  
California State Sheriffs' Association

**From:** General Counsel Martin J. Mayer; Chris F. Neumeyer

**Date:** August 13, 2010

**Subject:** **Tribal SLEC Officers Are Statutorily Ineligible For  
CLETS Access**

Pursuant to your request, we are forwarding the following legal opinion regarding the right to access CLETS.

### QUESTION

Are federal special law enforcement commission ("SLEC") officers of tribal policies agencies entitled to link to the California Law Enforcement Telecommunications System ("*CLETS*") by virtue of their *SLEC* status?

### ANSWER

No. Government Code section 15153 statutorily limits CLETS access to, exclusively, the State of California, cities, counties, and public agencies. Tribal law enforcement officers, even those with SLEC status, and their respective law enforcement entities, are statutorily ineligible for access to CLETS, as they are part of a "domestic dependent nation," and are not part of the state, a city, a county, or a public agency.

### ANALYSIS

#### *CLETS Governed by Chapter 2.5 of the California Government Code*

CLETS is a statutory creation of the State of California. Chapter 2.5<sup>1</sup> of the California Government Code ["California Law Enforcement Telecommunications System"] governs the administration of, access to, and operation of, CLETS.

#### *Access to CLETS Is Statutorily Limited by Government Code section 15153*

California Government Code section 15153 ["Direction and use of system"] provides for what types of entities are eligible for access to CLETS. Government Code section 15153<sup>2</sup> ("GC

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<sup>1</sup> California Government Code sections 15150 through 15167.

<sup>2</sup> California Government Code section 15153 states in full: "The system shall be under the direction of the Attorney General, and **shall be used exclusively** for the official business of the state, and the official business of any city, county, city and county, or other public agency." (Emphasis added).

15153") mandates that CLETS is for the exclusive use of only three types of entities: Those that conduct the official business of the State of California; those that conduct the official business of a California city and or county; or those that conduct the official business of a public agency.<sup>3</sup>

Unless a CLETS applicant meets one of these three requirements, the applicant does not meet the statutory requirements for access to CLETS. Tribal police agencies (and even their members with SLEC status) do not meet any of the three criteria established in Government Code section 15153.

### ***First and Second Criteria for CLETS Access Not Met by Tribal SLEC Officers***

First, tribal SLEC officers are not agents of the State of California, and do not conduct "official business of the state" of California.

Second, tribal SLEC officers are not agents of any California city and/or county and, thus, do not conduct the "official business of any city, county, [or] city and county."

### ***Third Criteria for CLETS Access Not Met by Tribal SLEC Officers***

Finally, tribal law enforcement officers (even those with SLEC status), as members of a "domestic dependent nation,"<sup>4</sup> are not members of a California public agency.<sup>5</sup> As defined throughout the government code, the phrase "public agency" generally consists of various types of governmental entities, all under the authority of the State of California.<sup>6</sup>

Tribal law enforcement entities, are not under the authority of the State of California and, therefore, are not "public agencies" as used in GC 15153.

Although the phrase "public agency" in GC 15153 is not expressly defined in Chapter 2.5 of the Government Code and, although the term "public agency" may be a somewhat vague term,<sup>7</sup> "public agency" is defined at least fifteen times in other parts of the Government Code.<sup>8</sup>

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3 "[T]he **Legislature requires** CLETS to 'be used exclusively for the official business of the state, and the official business of any city, county, city and county, or other public agency.' (§ 15153)." 82 Ops. Cal. Atty. Gen. 47, 48 (Cal. AG 1999) (Emphasis added).

4 "Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories." Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 509 (U.S. 1991).

5 "We find no legal basis for determining that an Indian tribe is a city, county, city and county, authority, or district of the State of California." 1996 Cal. AG LEXIS 48, at 13 (Cal. AG 1996).

6 "A canon of statutory construction--the doctrine of ejusdem generis--states that where general words relate to the enumeration of specific classes of things, the general words will be construed as applicable only to things of the same general nature or class as those enumerated. (See Dyna-Med, Inc. v. Fair Employment & Housing Corn. (1987) 43 Cal.3d 1379, 1390-1391 [241 Cal.Rptr. 67, 743 P.2d 1323]; Peralta Community College Dist. v. Fair Employment & Housing Corn. (1990) 52 Cal.3d 40, 50 [276 Cal.Rptr. 114, 801 P.2d 357].)" County of Yolo v. Los Rios Community College Dist., 5 Cal. App. 4th 1242, 1254 (Cal. App. 3d Dist. 1992).

7 Vallas v. City of Chula Vista, 56 Cal. App. 3d 382, 387 (Cal. App. 4th Dist. 1976).

8 Government Code sections 960, 3501.5, 4401, 6500, 20056, 22009, 22009.03, 31204, 31478, 31895, 53050,

Thus, under a well accepted principle of statutory interpretation, the meaning of "public agency" as used in GC 15153 can be determined by how the phrase is used in similar statutes throughout the Government Code.<sup>9</sup>

Most definitions of "public agency" in the Government Code are limited to agencies under the authority of the State of California; a few go so far as to include agencies of the federal government, and arguably agencies of other states may qualify.<sup>10</sup> However, the multiple definitions of "public agency" throughout the Government Code do not encompass Indian tribes, their respective law enforcement entities, or tribal SLEC officers of Indian law enforcement entities.

For example, the definition of "public agency" in GC 4401<sup>11</sup> is a common one, stating a "public agency" "includes the State, its various commissions, boards and departments and any county, city, district or state agency authorized to enter into contracts for public work."

GC 31204<sup>12</sup> defines "public agency" as "the State or any department or agency thereof, a county, city and county, city, public corporation, municipal corporation or public district."

GC 1150(b)<sup>13</sup> defines "public agency" as including "counties, cities, municipal corporations, political subdivisions, public districts, and other public agencies of the state."

GC 53050<sup>14</sup>, in contrast, is less inclusive, defining a public agency as "a district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state or a county, city and county, or city."

What these definitions all have in common are they encompass governmental entities of one form or another *subject to the general authority of the State of California*, such as a city, a county, or a department of the State.

Even if the definition of "public agency" is expanded to include agencies of the federal government (which is not the common usage of "public agency" in the Government Code and is thus not reasonable), tribal law enforcement officers still remain outside the statutory requirement for access to CLETS. Indian tribes, and their law enforcement entities (irrespective of SLEC status), are not federal agencies.<sup>15</sup>

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53101, 56070, 65932, 92016. Other definitions can be found as well.

9 Williams v. Superior Court, 5 Cal. 4th 337, 352 (Cal. 1993) ("well-accepted principle of statutory interpretation that permits reference to a similar statute 'to guide the construction' of the statute in question.").

10 GC 15162 expressly provides for interstate access, stating that "[t]he system may connect and exchange traffic with compatible systems of adjacent states and other participate in interstate operations." An Indian tribe is not a State within the federal system of the United States. Arizona v. California, 373 U.S. 546, 597 (U.S. 1963) ("An Indian Reservation is not a State.").

11 Concerning public works and public purchases

12 Concerning state retirement plans

13 Concerning public salaries and wage deductions

14 Concerning roster of public agencies

15 "An Indian tribe... must be considered to be separate and distinct from the United States, the federal government,

## ***California Attorney General Opinion Concludes "No CLETS Access"***

GC 6500<sup>16</sup>, perhaps the broadest definition of "public agency" in the Government Code, states that a "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, or any joint powers authority formed pursuant to this article by any of these agencies." Yet, even this definition of "public agency" does not include Indian tribes.

In 1996 the Attorney General concluded that the meaning of "public agency" in GC 6500 does not encompass Indian tribes. The Attorney General could "find no basis for extending the definition of public agency to include an entity which is neither a state nor a federal agency....Section 6500 expressly defines federal agencies, states, and political subdivisions of states as public agencies. An Indian tribe is none of these. **An Indian tribe, therefore, is not a public agency** within the meaning of section 6500." 1996 Cal. AG LEXIS 48, 16-17 (Cal. AG 1996) (Emphasis added) (concerning the Mark-Roos Local Bond Pooling Act of 1985).<sup>17 18</sup>

## **CONCLUSION**

Access to CLETS is governed by the exclusive criteria set forth in Government Code section 15153. To be granted access to CLETS, applicants must conduct the official business of the State of California, a California city and/or county, or a public agency. Indian tribes, and their law enforcement entities, do not conduct the business of any of these groups.

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and agencies and departments of the federal government. (See *The Cherokee Nation v. The State of Georgia*, supra, 30 U.S. at 16-20.)" 1996 Cal. AG LEXIS 48, at 16 (Cal. AG 1996) (Emphasis added).

16 Relates to joint powers agreements

17 Even common usage by the courts distinguishes between "public agencies" and "Indian tribes." Consider the language used by the federal Ninth Circuit in 1991, where reference was made to three groups: "local community planning groups, public agencies, **and** Indian tribes." Griffin v. Yuetter, 1991 U.S. App. LEXIS 21795 (9th Cir. Sept. 11, 1991) (Emphasis added). The federal court determined that Indian tribes and public agencies were not the same, but rather were distinct, and listed them as such.

18 Or consider the definition of "public agency" in the federal Fair Labor Standards Codes. 29 USCS § 203(x) defines Public agency to mean "the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission [Postal Regulatory Commission]), a State, or a political subdivision of a State; or any interstate governmental agency."

Indian tribes, tribal police departments, and even tribal SLEC officers, are all statutorily ineligible for access to CLETS, until or unless the California Government Code is amended<sup>19</sup> to expressly allow such access.<sup>20</sup>

As always, should you wish to discuss this matter in greater detail, please don't hesitate to contact me or Chris Neumeyer.

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19 For example, in 1971 the State Legislature expressly amended California Community Redevelopment Law by adding to California Health & Safety Code section 33002 the phrase "or Indian tribe, band, or group which is incorporated or which otherwise exercises some local governmental powers." Cal Health & Safety Code § 33002 ["Community"] currently reads as follows: "'Community' means a city, county, city and county, **or Indian tribe**, band, or group which is incorporated or which otherwise exercises some local governmental powers." (Emphasis added).

20 There may be further legal obstacles which prohibit access to CLETS for Indian tribe applicants (even with SLEC status) but this legal analysis only addresses the clear prohibition of access as mandated in Government Code section 15153. For example, it is questionable whether an Indian tribe would be willing (or even capable as a "domestic dependent nation" enjoying tribal sovereignty) to submit to the authority of the California Attorney General (as required by Government Code section 15165) for both system security and discipline.