

ALVIN A. JAEGER
SECRETARY OF STATE

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PHONE (701) 328-2900
FAX (701) 328-2992

E-MAIL sos@nd.gov

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

October 16, 2013

TO: Rep. Dennis Johnson and Members of the Tribal and State Relations Committee

FR: Al Jaeger, Secretary of State

RE: Central Indexing System, the Uniform Commercial Code, and Tribal Governments

Since at least March 2011, Scott Davis, Executive Director of the Indian Affairs Commissioner, and the Secretary of State's office have had ongoing discussions regarding economic development on tribal reservations and the benefits of tribal governments having regulations and a filing system for Uniform Commercial Code (UCC) secured transactions.

On September 27, 2012, the Secretary of State's office participated in a UCC seminar that was sponsored by the United States Small Business Administration, the Federal Reserve Banks of Minneapolis and San Francisco, and the North Dakota Business Development Office.

As part of that seminar, the Secretary of State's office presented copies of agreements that the State of South Dakota executed with two tribal governments in that state for UCC filings. Prior to the seminar, the legal counsel in the Attorney General's office for the Secretary of State on UCC related issues did advise that existing state law would allow the execution of similar agreements in North Dakota. As Secretary of State, I conveyed the willingness of my office to enter into discussions with any tribal government that would be interested in doing the same.

On January 10, 2013, I conveyed the same willingness in my appearance in the Brynhild Haugland Room before tribal government representatives participating in the State/Tribal Update/Orientation session. I also reaffirmed it a letter to Scott Davis dated April 30, 2013, which I have included as part of this testimony.

Because of the passage of HB 1136 in the 2013 session, the Secretary of State's office is developing a new Central Indexing System, which includes UCC. When deployed, all filings and searches will be done electronically. At that time, the Secretary of State's office will again extend its offer to have discussions with any tribal government that would be interested in executing a joint agreement to allow UCC filings to be effective on reservations.

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STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

April 30, 2013

Scott J Davis
Executive Director
Indian Affairs Commission
State of North Dakota
600 E Boulevard Avenue Dept 316
Bismarck ND 58505-0300

Dear Scott,

I regret that an earlier commitment will not allow me to attend the meeting of the Committee on Tribal and State Court Affairs at the William L Guy Federal Building in Bismarck on May 3. Therefore, I will miss the presentation on Tribal Secured Transactions Laws.

Even though I am unable to attend the meeting, my message is the same as it was during the Native Nations Business Summit in Mandan on September 27, 2012. That is, my office is committed to do whatever it can to facilitate "Bringing Business to Indian Country."

As you know, the Secretary of State's office administers the Central Indexing System (CIS), which is the state's depository for various lien documents, such as secured transactions filed under the Uniform Commercial Code (UCC). You and I have visited several times over the past few years about tribal governments not having UCC laws in place, along with a comparable filing system for secured transactions, and how it has inhibited economic growth in areas under their jurisdiction.

As part of a major 3.5 million dollar software project, the Secretary of State's office is currently developing a new CIS. The CIS component is scheduled for deployment by the summer of 2014. In addition, the North Dakota legislature recently passed House Bill No. 1136 and the Governor has signed it. The bill mandates the electronic filing of all lien documents into the CIS. Its adoption will allow this agency to program the state's CIS to become one of the best in the country with a very simple fee structure and enhanced filing and searching functionality.

I share the above news because a tribal government is welcomed to become a part of the state's CIS, if it is so inclined. For example, several years ago, two tribes in South Dakota executed agreements with that state's Secretary of State to utilize its existing UCC filing system. The Attorney General's office in our state has confirmed that the provisions of Chapter 54-40.2 of the North Dakota Century Code (Agreements Between Public Agencies and Indian Tribes) would allow me to execute a similar agreement with a tribal government.

In other words, by becoming part of the state's CIS system, the cost to a tribal government and the time expended to develop the UCC software and adopt the related laws might be significantly less than if it develops a system on its own. Please know that this office is ready to meet with any tribal government that is interested in discussing a potential cooperative agreement utilizing the state's CIS.

Sincerely,

A handwritten signature in cursive script, appearing to read "Al Jaeger".

Al Jaeger
Secretary of State