



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240

IN REPLY REFER TO

Tribal Government Services  
COCR-2009-004432

NOV 25 2009

Mr. Mark J. Gabriele  
Harris Beach PLLC – Attorney's at Law  
800 Main Street  
P.O. Box 712  
Niagara Falls, New York 14302

Dear Mr. Gabriele:

Thank you for your letter of August 28, 2009, in which you inquire whether Indian Hiring Preference under the Tribal Employment Rights Ordinance (TERO) is consistent with Title VII of the Civil Rights Act of 1964.

Title VII of the Civil Rights Act, prohibits preferential employment on the basis of race, color, sex, national origin, and religion. However, Title VII contains a special exemption that makes Indian Preference permissible. Section 703(i) of the 1964 Civil Rights Act states:

Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regards to any publicly announced employment practice of such business or enterprise under which a preferential treatment is to any individual because he/he is Indian.

The Office of Federal Contract compliance Programs Executive Order issued in 1977 states:

Work on or near Indian Reservations. It shall not be a violation of the equal opportunity clause for construction or non-construction, to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation. The use of the work "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from employment with the other requirements contained in this chapter.

The Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, 1975, Section 7(b), provides for Indian Preference in employment and training, and contracting and subcontracting on all contracts negotiated or let on behalf of an Indian Tribe pursuant to the Act.

The United States Congress justified that Indian Tribes' powers to impose preferential requirements on the grounds that, "This exemption is consistent with the Federal Government's policy of encouraging Indian employment and with the special legal position of Indians."

We hope that this information is helpful to you.

Sincerely,

  
for Kevin Bearquiver  
Deputy Bureau Director, Indian Services