

REPORT OF THE
JOINT SUBCOMMITTEE STUDYING RELATIONSHIPS
BETWEEN THE COMMONWEALTH AND NATIVE INDIAN TRIBES
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



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Report of the

Joint Subcommittee Studying Relationships

Between the Commonwealth and Native Indian Tribes
(HJR 97, 1982 Session)

To

The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1982

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

Conclusions

The Indian tribes that were native to the area that became the Commonwealth of Virginia are entitled to be recognized officially by the General Assembly of Virginia. Members of such tribes and other Indians residing in the Commonwealth should be assisted by the Commonwealth in securing available governmental benefits reserved for Indians.

Recommendations

1. That the General Assembly of Virginia adopt the house joint resolution hereinafter set out officially recognizing certain named Indian tribes native to Virginia.

2. That the bill hereinafter set out be passed to create the Commission on Indians, which shall gather information on the history of Indians in Virginia and to assist Indians living in the Commonwealth.

Discussion

1. The Joint Subcommittee did not set for itself the task of producing the definitive history of the legal relationships which have existed between the Commonwealth and its Indian tribes over the last three and one-half centuries. Indeed, documentary evidence in the form of legislation and the like is practically nonexistent from the early eighteenth to the twentieth century in terms of relationship with tribes as such. The exception would be the two tribes who have remained on reservations throughout the period. Otherwise, a direct state-tribal relationship ended for other tribes with the loss of tribal reservations by the early 1700's. The state continued to treat with Indians both legislatively and otherwise, but on an individual and not tribal basis. This history was summarized in documents and bibliography submitted to the Joint Subcommittee.

Rather, the Joint Subcommittee bases its report and recommendations on the present situation. While acknowledging the historical presence and contributions of the Indians of Virginia, the Joint Subcommittee believes that its charge is best fulfilled through recognition of the tribes which today retain an identity and structure and creation of a process which will ensure a productive relationship between the tribes and the State for the future.

2. The Hornbook of Virginia History (1965 revision) offers a succinct summary of what is known about Virginia's Indian population prior to and at the time of European settlement. It also presents perhaps all too common view of more recent Indian status which the Joint Subcommittee would like to dispel through this report. The Hornbook is quoted at length as follows:

"The Indians who were living in the Tidewater section of Virginia early in the seventeenth century were members of the Algonquian language group and numbered about 10,000 people. They were the first Indians to come into contact with the Jamestown settlers. Politically, they formed the Powhatan Confederacy, whose chief lived in what is now Gloucester County. Powhatan ruled despotically over all of the tribes living on the Virginia tributaries of Chesapeake Bay, although the more remote tribes feared and obeyed him less than those living nearest his main villages on the

York River.

Relations between the Jamestown settlers and the Indians of the Powhatan confederacy were alternately friendly and hostile. Opechancanough, the successor of Powhatan, tried unsuccessfully to wipe out the Jamestown colony in 1622 and again in 1644. The Indians, however, could not withstand the white man's weapons, his diseases, or his strong drink, and they were finally overwhelmed by the greater numbers of the English. Thus the Indians gradually declined in strength and influence. The remnants of the Powhatan Confederacy fell back into swampy regions which were not coveted by their English neighbors, and there a few small groups managed to survive. Gradually they lost their own culture and language and adopted, instead, the ways and tongue of the dominant white group. Considerable interbreeding took place between them and their white and Negro neighbors, and some Indian blood still flows in the veins of many Virginians.

The Indians in the southeastern part of the state belonged to the Iroquois language group and were closely related to the Tuscaroras of North Carolina. The major tribes in this region were the Nottoways and Meherrins, and they lived in the valleys of the Nottoway and Meherrin rivers, which are part of the Chowan drainage area. They were farmers and probably numbered about 2,500 persons in 1650, when English explorers first encountered them. These people were culturally much like the Powhatan tribes, but they did not belong to the Powhatan Confederacy. Unlike the Powhatans, they never seriously opposed white settlement and they managed to survive on small reservations until about 1825, when they sold the last of their lands. Some mixed-blood survivors of these tribes still live in Southampton County.

The Indian population in the Piedmont section was smaller than in the Tidewater area and little is known about the culture of the tribes who occupied the Piedmont. Among the more prominent tribes were the Saponi, Tutelo, Occaneechi and Monacans. They are thought to have spoken an eastern Siouan language, similar to that used by the Catawbias of South Carolina. By the time the frontier reached the Piedmont about 1675, the Indians of that region had already abandoned much of their primitive culture and had adopted European clothing, weapons and customs. They largely disappeared after 1725, but a few survivors migrated north and became part of the Six Nations of the Iroquois.

The early explorers in the Valley reported no Indian inhabitants there. Archaeological remains, such as village sites and mounds, indicate that the area west of the Blue Ridge was occupied in prehistoric times, but these people have not yet been identified as to tribe or language group, and they had disappeared from the region by the eighteenth century. The valleys of the Clinch, the Powell and the Holston rivers, which run into the Tennessee River, may have been actually occupied by the Cherokees before the coming of the white man to Southwest Virginia, but the evidence is inconclusive. It is believed that the Indians who originally occupied the area had been killed or driven away by their more powerful neighbors. The Valley and the Allegheny region were the scene of frequent incursions by the Iroquois from New York, the Shawnees from the Ohio River valley, the Catawbias from South Carolina, and the Cherokees from Tennessee.

Today [1965] six small Indian groups in Virginia, all of them originally parts of the Powhatan Confederacy, attempt to maintain their tribal identity. The two best known, the Pamunkey and the Mattaponi, live on tribal reservations in King William County. The Potomac in Stafford County, the Rappahannock in Essex and Caroline,¹ the Chickahominy in Charles City and James City, and the Nansemond in Nansemond County, all live in the same areas that were occupied by their tribal ancestors. There are also small groups of people in Gloucester, Accomack, Nelson, and Southampton counties, who have Indian features and who may be descendants of the tribes who once lived in those places. No one of these groups, however, had retained its original language. Although faint traces of their material culture survive, these are discernible only to people trained to recognize such evidence."²

3. With regard to the foregoing reference to contemporary Indian groups in Virginia, the status of the Mattaponi and Pamunkey tribes is most settled. These two tribes long have retained a recognized status not only in the popular mind but in a legal relationship with the state due to the fact that they have remained on reservations. This relationship may be traced back to the treaty of Middle Plantation which was concluded in 1677 between the Virginia colonial government on behalf of Charles II of Great Britain and several tribes of the Powhatan Confederacy, including the Mattaponi and Pamunkey. The treaty included provisions for tribal reservations and the right of internal tribal government. In modern times the obligations of the Commonwealth have been

minimal, primarily to protect the civil rights of tribal members and to act as guardian for the Indian land. These two tribes have not appeared before the Joint Subcommittee, no doubt relying on their treaty status, but the Joint Subcommittee believes that their recognition should be affirmed by this study to avoid any future confusion or misunderstanding.

The other tribal signatories to the treaty lost their land by the early eighteenth century, and with the loss of reservations they lost the recognition which has continued to extend to the Pamunkey and Mattaponi. The Joint Subcommittee has heard the direct testimony and received various documents from four tribes not residing on reservations. These are the Chickahominy tribe in Charles City County, the East Chickahominy tribe in New Kent County, the Rappahannock tribe of Caroline, Essex, and King and Queen counties, and the Upper Mattaponi tribe (at times known as the Adamstown Band) of King William County. The Joint Subcommittee concluded that these tribes had demonstrated that they have continued to reside roughly in the same area as their ancestral groups, retain a tribal identity, and operate social and religious institutions. It also is evident that since the early twentieth century the tribes have maintained an organized tribal government.

No evidence was presented along these lines with regard to either the Potomac or Nansemond tribes mentioned in the Hornbook summary. The U.S. census reports that there is a small Indian population in Stafford County and the City of Suffolk where the two tribes respectively are supposed to live. There has been no indication to the Joint Subcommittee, however, that there exists a tribal organization as with the aforementioned tribes.

Testimony was presented to the Joint Subcommittee that Indians in Halifax and Amherst Counties continue to retain a tribal identity. To this point the testimony has been indirect, however, and evidence of the type presented by the four tribes has not been provided. It is the intent of the Joint Subcommittee that the legitimate claim for recognition by these or other tribes could be ascertained in the future by the Commission on Indians which is recommended in this Report.

It should be noted that almost every county and city in the Commonwealth includes within its boundaries some of the approximately 9,000 Indians counted by the 1980 United States census. Indian representatives would place the "true" figure at a somewhat higher level. The Joint Subcommittee has not been presented with evidence of other organized tribes, however.

Finally, the 1980 census shows that roughly two-thirds of the Virginia Indian population now reside in the major metropolitan areas of the state. These "Urban Indians" include members of Virginia tribes who have moved for economic reasons, members of other Eastern United States tribes, and, to a lesser extent, members of Western United States tribes. The Joint Subcommittee heard testimony that these Indians may and often do maintain tribal ties, may receive assistance from tribal officials, and may participate in tribal affairs.

4. A brief statement of the reasons which led the Joint Subcommittee to recommend formal recognition is in order.

First, recognition is a matter of fairness. The Commonwealth should officially acknowledge the present descendants of people who resided in Virginia before the arrival of European settlers, who at times aided in white settlement, who have been productive members of Virginia society and contributed to its culture, and who have maintained a tribal identity.

Second, it is evident to the Joint Subcommittee that the ability to establish identity as an Indian is beneficial or necessary to individual Indians in numerous ways. Some of the testimony which the Joint Subcommittee heard in this regard clearly harks back to events of earlier times which no longer are at issue. Today, affirmative opportunities and ethnic pride are more often involved. Tribal recognition by the State will facilitate the affirmation of individual Indian identity.

Third, formal recognition is needed if Virginia's Indian population is to secure its share of federal governmental programs and support. Many federal programs contain components which are intended for Indian groups. These funds are "set-asides" for Native Americans and do not put tribes in competition with the state or its local governments for funds. Monies not sent to Virginia's Indians are simply lost to the State and to its Indian population.

One category eligible for these types of programs are tribes which hold federal recognition. These tribes, predominantly in the West, have a treaty relationship with the United States, occupy

reservations, and are under the jurisdiction of the Bureau of Indian Affairs. Virginia's tribes are not federally recognized, and the predominance of testimony before the Joint Subcommittee is that they do not want the encumbrances which it would also entail.

In the last decade, federal programs also have been made available to tribes which have been recognized by their state governments and to organized "Urban Indian" bodies. It is through the recognition recommended by the Joint Subcommittee that the Virginia tribes will be able to apply for and administer those federal programs.

5. The Joint Subcommittee does not believe that it is necessary to create an Indian "bureaucracy" as some states have done. Indeed, the testimony was that Virginia Indian tribes also wish to avoid such a creation. The Joint Subcommittee does believe, however, that it would be beneficial to create a Commission on Indians to serve as an advisory body to the Governor. The Commission would be available to advise the Governor as to how programs affect Indians, direct research on Indian history, provide liaison with the Indian tribes, and recommend through the Governor any needs for legislation in the future. A small staff, perhaps of only one person, should be assigned to the Commission. The exact details as to duties and staffing would be left to the governor, as might be amended by future legislative action.

Respectfully submitted,

Delegate C. Hardaway Marks

Senator Elmo G. Cross, Jr.

Delegate J. Paul Councill, Jr.

Delegate Thomas E. Glascock

Delegate George W. Grayson

Delegate Robert C. Scott

Senator W. Onico Barker

Senator Wiley F. Mitchell, Jr.

Mr. Stephen R. Atkins

Ms. Nokomis M. Fortune

Dr. Louis H. Manarin

FOOTNOTES

¹Testimony before the Joint Subcommittee indicated that members of the Rappahannock tribe also reside in King and Queen County.

² A Hornbook of Virginia History (Richmond: The Virginia State Library, 1965), pp. 6-8.

House Joint Resolution No.

Creating a joint subcommittee to study the historic dealings and relationships between the Commonwealth of Virginia and Virginia Indian tribes.

WHEREAS, Virginia has recognized the existence of several Indian tribes and maintained a special relationship with those tribes since colonial times; and

WHEREAS, although a special relationship exists between certain tribes and Virginia government, the nature of that relationship has never been expounded in statute or otherwise; and

WHEREAS, some Virginia tribes are not presently recognized by Virginia even though these tribes have maintained their cultural distinctiveness since colonial times and were dealt with and recognized by Virginia in the past; and

WHEREAS, these tribes, who are presently unrecognized by Virginia, are as a result, deprived of state acknowledgement of their cultural and political heritage; and

WHEREAS, the Indian people of Virginia have since colonial times greatly enriched the State of Virginia culturally and politically; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That there is hereby created a joint subcommittee which shall consist of eleven members: five shall be appointed by the Speaker of the House of Delegates from the membership thereof; three shall be appointed by the Senate Committee on Privileges and Elections from the membership of the Senate; and three shall be citizens appointed by the Governor and knowledgeable in Indian affairs.

The joint subcommittee shall undertake a comprehensive study of the historic dealings and relationship between the Commonwealth of Virginia and Virginia Indian tribes. The study shall include, but not necessarily be limited to, the Pamunkey Tribe, the Mattaponi Tribe, the Upper Mattaponi Tribe, the Chickahominy Tribe, and the Rappahannock Tribe. The joint subcommittee shall coordinate its efforts with those tribes and take appropriate steps to ensure Indian input into the study and the resulting recommendations. The legislative members of the joint subcommittee shall receive such compensation as set forth in § 14.1-18 of the Code of Virginia. All members shall be paid their necessary expenses incurred in the performance of their duties but shall receive no other compensation. The cost of conducting this study shall not exceed \$11,00. The joint subcommittee report shall contain the results of the historic study and recommendations for legislation with respect to recognition of presently unrecognized tribes, defining the nature of the relationship between Virginia and recognized tribes, and Virginia Indian policy generally. The joint subcommittee shall complete its work in time to present recommendations to the Governor and the 1983 General Assembly.

House Joint Resolution No.

Recognizing certain Indian tribes native to the area that became the Commonwealth of Virginia.

WHEREAS, the first English settlers in the land that later became the Commonwealth of Virginia found it inhabited by people the settlers called Indians; and

WHEREAS, throughout the history of the Commonwealth many of the descendants of the Indian tribes first encountered by the English settlers have continuously maintained their homes in the Commonwealth; and

WHEREAS, such Indian tribes and their descendants did contribute, and have continued to contribute, to the settlement and growth of the Commonwealth, and

WHEREAS, such Indian tribes have maintained their background; and

WHEREAS, the Commonwealth has formally recognized the existence of some of the native Indian tribes and informally recognized the existence of other native Indian tribes; and

WHEREAS, officials of the Commonwealth are aware that there reside within the boundaries of the State members of many Indian tribes which were not native to this area; and

WHEREAS, recognition of Indian tribes by the Commonwealth would correct an historical oversight and be of assistance to such Indian people in obtaining federal funds set aside for Native Americans; now, therefore, be it;

RESOLVED by the House of Delegates, the Senate concurring, that the General Assembly of Virginia recognizes the existence within the Commonwealth of the following Indian tribes:

- 1. Chickahominy;**
- 2. Chickahominy, Eastern Division;**
- 3. Mattaponi;**
- 4. Upper Mattaponi (sometimes referred to as the
Adamstown Band);**
- 5. Rappahannock;**
- 6. Pamunkey; and be it**

RESOLVED FURTHER, that the General Assembly of Virginia by virtue of the United States census and other evidence acknowledge the fact that members of other Indian tribes reside within the Commonwealth.

D T

A BILL to amend and reenact § 2.1-51.15 and to amend the Code of Virginia by adding in Title 9 Chapter numbered 20.1, consisting of sections numbered 9-138.1 through 9-138.4, the amended and added sections relating to the Commission on Indians.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-51.15 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding in Title 9 a Chapter numbered 20.1, consisting of sections numbered 9-138.1 through 9-138.4 as follows:

§ 2.1-51.15. Agencies for which responsible.—The Secretary of Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Visually Handicapped, Department for the Aging, Commission for Children and Youth, Commission on the Status of Women, Commission on Indians, Department of Mental Health and Mental Retardation, Department of Rehabilitative Services, Virginia Council for the Deaf and Department of Social Services. The Governor may, by executive order, assign any other state executive agency to the Secretary of Human Resources, or Reassign any agency listed above to another secretary.

CHAPTER 20.1.

COMMISSION ON INDIANS

§ 9-138.1. *Commission created; appointment and terms of members; chairman; expenses.—There is hereby created a Commission on Indians. The Commission shall be composed of ten members, to be appointed by the Governor from the Commonwealth at large. At least five of the appointees shall be Indian. The Governor shall make appointments to the Commission as follows: Initially five members shall be appointed for terms of three years, and five for terms of two years. Subsequent appointments shall be for terms of three years, except appointments to fill vacancies, which shall be for the unexpired terms. A Chairman shall be elected from the members for a term of one year. Members of the Commission shall receive no compensation for their services, but shall receive their actual and necessary expenses incurred in the performance of their duties.*

§ 9-138.2. *Powers and duties; cooperation of state agencies.—The Commission shall gather information on and make studies and conduct research into the Indian tribes in this Commonwealth, and suggest ways in which Indians may reach their potential and make their full contribution, as wage earners and citizens, to society and this Commonwealth.*

§ 9-138.3. *Staff; application for and acceptance of gifts and grants.—The Commission is authorized, subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of the Code of Virginia, to employ such staff as may be necessary to enable it to perform its duties. The Commission is further authorized to apply for, accept and expend gifts, grants or donations from public or private sources to enable it better to carry out its objectives.*

§ 9-138.4. *Reports to Governor and General Assembly.—The Commission shall report its findings and recommendations to the Governor and the General Assembly not less than sixty days prior to the convening of the session of the General Assembly held in each even-numbered year.*

