

# Is Osage County a reservation? Tribal official says yes

By Tony Thornton  
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FAIRFAX - An Osage Nation plan to assert environmental jurisdiction over the state's largest county appears to be dead. However, the tribe's chief isn't reverting from his claim that Osage County is a reservation.

In his latest volley, Principal Chief Jim Gray claims state consumer protection inspectors have no authority to enter a tribe-owned grocery store in Fairfax.

Gray's argument is that the store, called the Palace of the Osage, is within the Osage Reservation, which he said includes all of Osage County.

Therefore, only the tribe's laws apply,

Gray said in a May 22 letter to the state Department of Agriculture, Food and Forestry.

"As such, from this point forward unless federal laws or the laws of the (Osage) Nation provide otherwise, neither the Department of Agriculture, Food & Forestry, nor any other state agency has lawful authority to enter the Palace of the Osage, or any other tribally licensed business located within the Osage Reservation for the purpose of enforcing state law and regulations," Gray wrote.

An Agriculture Department attorney said Gray may be right. However, the tribe and another state agency are embroiled in a lawsuit over a related issue.

## Bill shelved

Gray's letter is being circulated by members of the Osage County Cattlemen's Association. That entity was instrumental in killing - at least temporarily - an Osage Nation bill to create and regulate environmental standards for all of Osage County.

That bill sought to supercede state and federal environmental rules and would have applied to anyone who lives or conducts business in the county.

It would have forced non-Osage landowners to comply and would have established tribal court as the place to settle

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disputes.

Tribal officials said Thursday the bill is on indefinite hold.

Two July hearings to discuss the measure have been canceled.

The bill's author, Osage Congresswoman Faren Revard Anderson, previously said she introduced it at the request of Gray's office.

### Pricing violations found

The new controversy stems from consumer protection inspections of the tribe's Fairfax grocery store dating to 2005. An inspector notified the store of pricing errors on several visits, records show.

For instance, margarine marked at \$1.49 actually cost \$1.99.

A gallon of barbecue sauce advertised at \$10.18 actually cost \$13.29.

In several instances, however, the store charged less than the offered price.

Under the Oklahoma Weights and Measures Law store price scanners must match the offered price 98 percent of the time. ~

The Agriculture Department's consumer protection services division wrote at least three notices of violation this year and imposed a \$2,100 fine, which the store paid, records show.

Gray's letter said the store manager never told any tribal government officials about the inspections and agreed to pay the fine without first contacting Gray.

Payment of the fine doesn't mean the tribe consents to state jurisdiction over the store, Gray wrote.

### Jurisdiction key to lawsuit

It is generally accepted that the state can't enforce most codes and regulations on Indian trust land in Oklahoma.

For instance, state Fire Marshal Robert Doke has said his agents can't enter tribal casinos and inspect for occupancy or smoking restrictions.

However, the Osage's grocery store isn't on trust land. The tribe has paid taxes on the store's property for years, County Assessor Gail Hedgcock said.

Last year, the tribe paid \$1,739 in property taxes she said.

Janet Stewart, the agriculture department's general counsel, said her understanding is that all tribe-owned property is considered Indian land, and therefore exempt from state law. ~

"It doesn't matter if it's trust land or restricted land or unrestricted land," Stewart said.

The agency sent Gray a letter on June 28 seeking to "work together" concerning consumer protection enforcement. Gray hasn't responded, Stewart said.

Not all state agency attorneys agree with Stewart's interpretation of what constitutes Indian land.

The state Tax Commission has been fighting the issue of the Osages' jurisdiction in federal courts since 2001.

In that case, the tribe claims its employees who live in Osage County are exempt from paying state income taxes.

An attorney for the tribe noted that the National Indian Gaming Commission ruled that the Osages, unlike any other Oklahoma tribe, still have a reservation. That reservation is Osage County, the federal agency said.

A Tulsa federal judge dismissed the lawsuit in 2003. The tribe appealed to a federal appeals court in Denver, where oral arguments were held nearly three years ago. The appeals court hasn't issued a ruling.