

The Melby Case

The following testimony was presented before a committee of the Minnesota Legislature by Mr. Carroll Melby. Mr. Melby owns a business on privately owned (fee land) located within the exterior boundaries of the Grand Portage Indian Reservation.

His testimony is fair warning of the assault on civil and property rights of non-Indians doing business with Indian tribes under the laws and regulations of current federal Indian policy.

House Committee Testimony—March 13, 2000

Madame Chairman and Committee Members:

Let me give everyone a quick recap of our case. We own property in the Grand Portage Reservation area where we run a small marina and a three unit motel. We have owned this property, about 13 acres, since 1966. In 1994, I felt we should have a building into which we could store our boats and be able to work on our heavy equipment out of the elements.

In August 1995, we applied to our county, Cook County, for a building permit. A Cook County official helped me choose the site and issued a permit. The site placed one side of the building within about 85 to 90 feet of the vegetation line and the county code was no closer than 50 feet.

Sometime after August the Grand Portage Band passed their zoning ordinance. In July 1996, I started to build the building. In September a band official came over and said I had to apply to the Band for a permit. I said no, I was on private land, not on the reservation and I did receive permits from the government which have jurisdiction over my property.

I finished contraction of the building that fall. During 1997 the Band developed their own court system. In the fall of 1997, I was served a summons to appear in their court. They wanted me to apply for a building permit, and a variance as their code said buildings had to be 100 feet from the vegetation line. If I did not receive a permit and variance I was to tear down the building and be fined \$200 a day until I did so.

I contacted Persian, MacGregor and Thompson and we filed a suit in federal court. Judge Alsop was assigned the case. There were many factors involved in the case, such as did the Grand Portage Band even have a legal court, do Indian Band rules apply to non-Indians, was our land on a reservation, do they have jurisdiction over non-Indian lands.

We asked our County to help us in this case as we had not violated any laws and the law being challenged was the County's zoning jurisdiction. They refused. After many delays by the Band, we presented our case to Judge Alsop in the Spring of 1998. In August 1998, Judge Alsop did not make a final decision but said we had to go to tribal court and let them decide if they had jurisdiction over our property.

Well we went to the Band's court in November of 1998. Oh by the way, we were the first and are still the only case this court has had. I hope it does not surprise you, but the Band's court found in the Band's favor in March 1999. However, not only did the Band's judge say the band has jurisdiction over non-Indian lands but the judge also said that non-Indians would be subject to any and all additional laws passed by the Band.

Please keep in mind that I am greatly simplifying and reducing the verbiage of the decision.

In August 1999, we went to the Band's court of appeal. February 24, 2000 they rendered their decision. Needless to say they reaffirmed the earlier Band judge's decision. In the appeals court decision, they made the comment that the Grand Portage Band could clearly require Melby to have a tribal business license and/or reasonably tax his commercial activities. They also state that our three room motel and marina business, which doesn't even break even each year, is a threat to the health and welfare of the Band. Isn't it amazing, the threat of such a little operation against a casino hotel. Their hotel, casino and marina business were built long after we were operating our business.

They have reaffirmed the Band's contention that because I use the Band's municipal water and that I sell goods, services and Michigan fishing licenses to band members that constitutes a consensual relationship and therefore they can control our business.

So how does this effect others in Minnesota and the entire United States that live or own property on or adjacent to an Indian reservation? What happens to us applies to all of them.

We should not be in this litigation, as these issues are issues which the counties and the State of Minnesota should be in. We as individuals have no control over the laws of the county and State. I feel you in the State Legislature have contributed to this problem by allowing this expansion of powers by Indian bands. I dedicated thirty years of my life in the Air Force with the understanding that all people in the United States are equal. Officials in State government and officials in the federal government have been creating a group of people that have rights and privileges far greater than the majority of citizens. I am not anti-Indian, I am anti-special privileges for a small group of people. You have the power to stop this expansion of special rights and privileges.

I ask you to do so.

In our case, the Band is accomplishing one of their objectives, and that is monetarily breaking us. The cost to date is over 100 thousand dollars. We have had to cash-in our savings, our investments, mortgaged some of our property and have other property up for sale.

Why did I not roll over to start with? This case started as a question over zoning jurisdiction, but as you can see the Band has expanded it, as we predicted, to be complete control over us non-Indians. I spent thirty years in the Air Force making numerous sacrifices as my family did, I put my life on the line and was shot at numerous times in the line of duty trying to protect freedoms, and now that I am a retired disabled veteran, I will be damned if I will give up my freedoms.

I ask for your support in protecting them.

Carroll Melby