Transcript Summary

UAF Oral History Call No: 2024-01-03 PT. 2

Date of Recording: 03-02-1981

Length of Recording: 01:04:19

Narrator: John Shively

Interviewer: N/A

Others Present: N/A

Recording Location: Presumed to be University of Alaska Fairbanks Campus

Transcriber: Micki Sievers

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(00:00:09)
Recording begins while Shively is talking so some context might be lost. Shively begins saying Congress has been willing to recognize and agree to a set of amendments. The federal government managed any lands until the Natives get them, some of those lands have existing leases and rights of way that are making money for the federal government. The AFN [Alaska Federation of Natives] said the Natives should get that money and they agreed but said they don't have a way to make an escrow account, and so they passed an amendment that said they did have the authority to have an escrow account, so now there is an escrow account. When the land is conveyed the government would pay the money out of the escrow account.

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Another thing done through NANA was that Village Corporation aren't economically viable with no real potential for business, and they'd go bankrupt if they don't do something. NANA wanted to merge the villages into the region and unify them. The part of the theory of people who wanted to undo the Claims Act [Alaska Native Claims Settlement Act] was you separate into as many pieces as possible so there's more opportunity for conflict. Congress agreed and allowed villages to merge either with their villages or the region, Shively provides some examples of groups who have merged.

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A student mentions William Hall who she believes led the movement. Shively says he was involved with the Tlingit and Haida in their lawsuit for land, but they lost a lot of land in the lawsuit. Shively says he was important but not as important as others in AFN and he wasn't very active in Washington D.C. Students ask a few more questions but most of it is hard to understand.

(00:07:25)
Shively states they got some exemptions from the Securities and Exchange Commission until 1992 when the stock can be sold. They also got an amendment that said if stock was inherited then people didn't have to pay inheritance tax on it until 1992, because the stock had no value. It was Congress's first real

commitment to say look we know there are going to be problems, but if they have the consensus to deal with it they will. Congress had not generally passed things the Native didn't want. They also said when you're dealing with Native issues there are four groups who should be involved: the Natives, state, federal government, and on some issues environmentalists. If you can come to an agreement with 3 out of 4 of those groups, they'll support it, and that test was used repeatedly when they went through the D2 Bill. AFN had to go around and call all groups around Alaska to gain Native input. On multiple occasions agreements were made that the environmentalists didn't want.

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Shively states there are a couple other things he wants to state about AFN. It's probably not to this day settled as to what AFN is going to be, or even if it is going to survive. The Aleuts had walked out in the early 70's, it hasn't made a lot of difference to AFN because they are not key political players in the state. Other regions questioned the value of AFN, one said there's many non-profits helping communities so what do they need AFN for. Shively says one reason they need AFN is because they helped them get their share of 3.5 million dollars last year that they would have never got on their own, and more. AFN has to prove themselves every year because it's what are you going to do every year, because it does cost money, the budget for AFN is around $300,000 and that money does come from the regions. It is done on a formula that every region pays $8,000 and the rest of the budget is divided up based on how many people you have in your region. For regions like Sealaska it can be substantial, at one point they paid over 20% of the budget because they had so many people.

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Shively states it's become more difficult because a number of Native corporations have said they've had a lot of trouble with what people call business, because they aren't businessmen. Many of them hired businessmen from outside of the state, people who have no relationship with AFN, little if any political experience, and they view the region as a corporate loss, so this strained relationships with AFN. Relationships are also hurting AFN because there had never been a formal association of village corporations, because it's hard to organize. There are also groups who wanted special recognition in AFN such as the elder's conference, Alaska Native women's group, and more which has not really been dealt with. Native non-profits have been dealt with as a way to deal with social needs. A student asks about the non-profits and Shively says IRA councils are very common, and many villages have city governments. Shively believes every village chose to be profit instead of non-profit and he asks the class why they chose that. Shively explains the reason is a technical one, because if you are a profit corporation you can distribute money to each shareholder, if your non-profit you cannot distribute to your members.

(00:22:30)
A student asks if Shively is now able to answer her question from earlier about what he would do. Shively explains there might be a constitutional problem, which makes him not sure if they can resolve it. What happens with 7(I) is that Congress said people would get money, and some of that money would be shared. So Congress created a right in the region and village, Congress cannot take rights away generally without compensating. So if they do something to change 7(I), that means someone gets less money, congress has to pay the difference, and they're not about to do that. Now it is possible that Congress could go back in and change it because it's a piece of Indian legislation, and it's not a taking because they are dealing with an Indians settlement. There is a very fine legal argument, because he doesn't think Congress wants to gamble and make a change, then if the court goes against them they'd have to pay a lot of extra money. However, they could make the change, and say it's good as long as it is upheld by the constitution. The problem with changes like that, is as a minimum you have to get the 12

regions to agree, and you couldn't do anything that would totally irritate the villages. One issue is lawyers and management are unable to agree and work something out. AFN developed the concept of sharing among all Natives in the state, because it wouldn't be fair to have one or two corporations be rich while everyone else is poor. If people agreed with that concept, 7(I) could be solved tomorrow afternoon, if 12 regional corporation leaders could agree to share it could be solved. You have regions who don't want to share and see them as their resources, so to get around it they say they have deductions and costs. Shively thinks he doesn't have a good solution under the existing system. Shively thinks people are getting sick of it, and most regional leadership send the paperwork to their lawyers.

(00:28:50)
A student asks what about the amendments in the D2 bill, what affect have they had. Shively responds there were several key issues dealt with in the D2 legislation such as taxes. The Alaska Land Bank says a Native corporation can sit down and cut a deal with the government to manage their land cooperatively, but if the Natives don't want to develop their land, they won't be taxed and it cannot be lost in a bankruptcy if they haven't already pledged it. The land is free from adverse possession, which is squatter's rights, someone can't come in and sit on it and claim it's theirs. Shively goes on to explain more details on the process of paying back taxes.

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From the protection of corporations from outside takeover, there's another amendment that wasn't quite successful. The D2 bill says that if corporations want to amend their articles of incorporation, they can in order to provide certain protections. One is known as a right of first refusal, where if you are offered money for your shares your organization could offer to pay you the same amount or they'd inform you if you're being scammed for the price, so it offers the organization to pay for the stock and allow it to remain in Native control. The problem is though, how many major corporations can approach people for their stocks before the organization runs out of money. The second thing corporations can do is provide that if stocks are sold to a non-Native that you can't vote in the elections on how corporations run. Shively says that will likely work to help prevent takeover of corporations.

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The students ask multiple questions and Shively gives quick responses to the discussion.

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Shively explains he doesn't believe Natives should ever sell their stock, that what that stock represents is really the only outward visible sign of being a Native. If you sell the stock that's the end. If you're a poor person without enough money to buy fuel, but someone wants to buy your stock, you're going to have a hard time not selling. It's only if the Natives themselves recognize that the value is there for them as people, and ignore the economic potential, then it will probably pass on to non-native hands. Shively says he's non-Native so he doesn't have to make the decision, but it's hard for those who are shareholders.

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A student begins talking but it is undiscernible. Shively responds that the issue is left wide open because they developed the amendment. When they developed the amendment they wish they had been able to say these things had to be done, but at least one region wouldn't go along with that because some shareholders might not want to go with that because it makes the stock less valuable when you have those restrictions. Another thing about stocks that has positive aspects is it would allow mergers

between regions. Shively says the more people are together the stronger they are, but you can still be bigger and mess up.

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A student prompts a question about land trusts but most of it is unintelligible. Shively says most of the land is owned by the corporations and is supposed to be managed, but the stocks can be sold to other people. Another student asks a question about selling the land. Shively explains allowing people to cross an area isn't giving them the right to dig up the land. The student suggests tolling but Shively says you don't need to toll, and there are rules in place that say you can't charge for an easement. The student asks if they are allowed to build roads there, and Shively says you can't just build a road there's an extensive process to approving a road. A student prompts another question about airports. Shively says they are a real problem and begins to respond but then the recording cuts off.

(00:47:30)
Recording resumes in the middle of Shively speaking. A student begins mentioning dividends and how they work, she provides an example of her husband dealing with a dividend issue and asks about if they should sue. Shively says not to sue and the fact they aren't in a village is what makes it legal. Shareholders could vote to make them give the money away, but that would make a village corporation fail if they give out too many dividend payouts. The dividend relates directly to the ownership of shares. The student states she didn't understand how it worked. Shively says because of things like that it's caused a lot of confusion.

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Another student mentions how a lot of villages are scared of mergers, and there's a lot of fears, and how does Shively responds to those fears. Shively says the biggest argument against it is whether or not the shareholders feel like they can control management. If the region goes down, everybody goes down, all your eggs are in one basket. Shively just thinks it's a better basket and has more staying power, but with bad management you're gone. If all village people merged, then they're all the same and they have the same interests.

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The student says if the region collapses and the villages still have their own corporations and they still control their subsurface land but then his question becomes unintelligible. Shively says even though a billion dollars sounds like a lot, it isn't that much now as it is all split up all over the place. The money is what makes them go, and with mergers you're combining land and money. Shively says their corporation is more successful because they merged.

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Another student asks if someone is hunting or polluting on an easement what punishment would be enforced. Shively says the trespassing laws aren't that good, so the best thing to do is try to get a sheriff to arrest them for trespassing, a misdemeanor is the maximum punishment. Shively says that's why they wanted to cut down easements, because the more you got, the more enforcement problems you got. The federal government said they would help but now they're backing off and saying it isn't their problem. The same student asks about roads going across the easement. Shively says if it's a road easement you can use cars. He mentions they can expand and widen the roads.

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A different student asks with village corporations that even if they did become financially broke, that if a resource started to be developed, that then the money could come back up and restart the corporation. Shively says it depends on what they got left, because if they go bankrupt they lose the land. If the land is tucked away in a land bank, they can fiddle around and hope someone strikes oil and they'll get money from 7(I), but he doesn't know if that will really work or not. He also doesn't know what good it will do for the shareholders.

(01:00:05)
The student who mentioned dividends earlier asks more about them but it isn't completely clear on recording. Shively says when we get to 1992, and you aren't getting any more money from your corporation, is you could buy in or get inherited stocks. Shively isn't very happy about the 1992 rule, and believes it could be changed to being inherited instead of just completely taking the stock away from Natives. On the other hand if he buys some stock and then his future children inherit it, he believes there should be an inheritance tax. If it's kept in the family or given to other Natives there shouldn't be a tax. He thinks if they had given it more thought they could have dealt with it in the D2 bill, but they didn't. The student asks if there's any form of evaluation at this time. Shively says at this point there isn't and it's irrelevant because there is no inheritance tax at this point. There are a number of ways to try and do it and he isn't sure what the IRS would choose. If there's not a lot of activity in Native shares it will be harder to determine. One of the problems in valuing stock is its land and how do you value the land. Shively is out of time and thanks the class for being there.

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Recording cuts off.