

INDIAN COUNTRY TODAY

OPINION

Protecting tribal financial sovereignty

By Daniel N. Lewis

Story Published: Jul 13, 2009

An independent financial advisor can strengthen a tribe's ability to reach its long-term goals.

Given today's economic and financial environment, yesterday's borrowing decisions – whether from banks, bonds, or a tribe's own reserves – are building pressure on tribes to resolve financial issues at a time when they are left with fewer options.

Nevertheless, equipped with the right information, thorough analysis and solid forecasting, a tribe can start making financial decisions that are thoughtful, clear and sustainable. The question is: How do we put our tribal financial house in order?

Today's tribal finance department not only has to ensure that the accounting and auditing processes keep pace with new rules and regulations, it also has to regularly monitor whether the tribe can meet its short and long-term financial obligations and growth objectives.

In addition, the finance department must have the ability to perform increasingly sophisticated financial analysis and forecasting on existing enterprises and provide their opinion on whether and how new projects should be financed. Such financial analysis by itself is a significant and demanding responsibility that can have a tremendous impact – positive or negative – on a tribe's financial health and the manner in which a tribe's financial integrity is viewed by banks and bond investors.

Add a political component to the mix on issues such as tribal budgets, per capita payments, and whether a tribe should use bank or bond financing, or tribal reserves and the pressure to make the “correct” financial decision becomes even more critical. With these difficult financial choices, questions arise about objectivity, thoroughness, dependability and quality. In an effort to appease various constituencies, information provided to tribal decision makers may either be too rosy or too conservative giving rise to future unintended financial landmines or missed opportunities.

To avoid making decisions without completely understanding its current financial condition – particularly in these challenging economic times, a tribe would be well-advised to step back and consider hiring a competent financial advisor to assist them and their financial staff in conducting a thorough and independent financial review.

Here are a few suggestions to keep in mind when hiring a financial advisor:

Remain in control. A financial advisor works for you; not the other way around. It's called Indian self-determination for a reason. Establish a reason, focus and timeline before you hire a financial advisor. If you don't set the parameters first, don't be surprised if that same financial advisor begins suggesting that you expand their scope of work.

Be open. Like a medical checkup, you have to be candid with your financial advisor. Based on tribal consultations with leadership and financial staff, accountants and lawyers, your financial advisor will develop a comprehensive financial plan that identifies problem areas and makes recommendations for improvement. The advisor selects the most suitable financing vehicle or appropriate investments compatible with the client's goals, attitude toward risk, and expectation or need for a return on the investment.

Experience, experience, experience. When evaluating a financial advisor, be sure to critically assess the advisor's background relative to the scope of work the tribe is requesting. For example, does the advisor have significant experience in various areas of finance (bank debt, high yield debt, municipal finance, mergers and acquisitions)? Did they have leadership roles in the transactions or were they just along for the ride? Do they maintain an active dialogue with Wall Street thereby enhancing their understanding of the current capital markets?

Follow the money. If your advisor is being reimbursed by anybody other than the tribe for working on a project, it is impossible for them to be independent and objective with their recommendations. If an advisor says they will not charge the tribe for their services because they are going to be reimbursed by the lender, the words conflict of interest should immediately come to mind. How do you know whether the advisor isn't shopping your deal among various lenders to enhance their return? Or if an advisor has incentive to recommend financing options that do not benefit a tribe but earn them a fee. Likewise, if an advisor has a tendency for client entertainment – particularly lavish entertainment, rather than the job they were hired to do, be alert. Not only should their advice be suspect, but usually their interest in extending and expanding their contract is directly proportional to the level of gifts and entertainment.

Keep it simple. Make sure your advisors' presentations are clear, concise, cogent and complete. I am always amused when advisors tend to use polysyllabic words (like that one), rather than speak in clear and simple sentences. The burden is on your advisor to break down the financial jargon so you can understand their presentation and the rationale behind their recommendations.

Choose an advocate not an adversary. Some financial advisors will work for anybody willing to hire them regardless of whether they represent a tribe one day and a lender the next. How can a financial advisor suggest their advice is independent and objective knowing they dare not bite the hand that may feed them tomorrow? Even worse, some advisors may appear pro tribal one day, but are more than willing to take on an assignment advising non-tribal competitors.

Don't be afraid to start over. If your advisor turns out to be less than originally advertised, start over. If their advice has put a financial straightjacket on your tribe don't hire them again just because they tell you they can now set you free.

Today tribes are facing a financial environment that is complex and rapidly evolving. Identifying a trusted financial advisor whose interests are genuinely aligned with a tribe and has the depth and experience to enhance the tribes existing finance staff will empower a tribe to confidently assess its current financial picture and achieve a tribes long-term goals.

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