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PART I

GENERAL

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*See BIAAM Part 21
 issued 3-3-69 (Amendment Request)
 IAM pages were not removed on
 BIAAM Release 21-1.*

CHAPTER 1

DEFINITIONS, BASIC OBJECTIVES,
AND GENERAL POLICIESSection 101. Definitions of Program and Programming.

- .01 Program. A program is an approved plan of action designed to achieve an authorized objective in accordance with established policy. Bureau programs may vary according to the area or people affected, the immediate objectives sought, the activities involved, and the time required for completion. For example, a particular program might affect the Indians of a specific reservation, or it might affect the Indians of all reservations within a given State or area. Such a program might have the immediate objective of optimum resource development, or it might seek the transfer of responsibility to other agencies for the furnishing of community services to the Indians, or it might have the immediate objective of terminating completely Bureau trusteeship and supervision over the affairs of the Indians concerned. The particular program might involve only resources activities, or only community services activities, or both of these categories of activities and others. The time required to complete the program might be one, two, or more years.
- .02 Programming. Programming is the development and planned application of a program. It consists of identifying problems or tasks, assembling and analyzing the pertinent facts relating to those problems or tasks, developing possible alternate solutions, agreeing upon solutions to be applied, scheduling action in accordance with the solutions agreed upon, following through with the scheduled action, and then rechecking to ascertain that the problems or tasks have been resolved.

Section 102. Basic Objectives.

- .01 Social and Economic Advancement of Indians. The fundamental objective of all Bureau programs is the social and economic advancement of the Indian people sufficient to remove their need for the supervision and services rendered under the special jurisdiction of the Bureau.

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- .02 Release of Indians from Bureau Jurisdiction. A corollary objective of all Bureau programs is the release of Indian people from special Bureau jurisdiction and the termination of Bureau trusteeship and service responsibilities when the Indian people have advanced sufficiently in their social and economic development to proceed without benefit of the Bureau's special supervision and assistance.

Section 103. General Policies.

- .01 Assistance to Indians. It is the policy of the Bureau in all programming activities to encourage self-reliance and leadership among the Indian people, working with Indian people in such a way that their social and economic development will enable them to assume ownership, control, and responsibility for their property now held in trust by the United States and assisting them to participate in the services and civic affairs of the State and local governments where they reside.
- .02 Termination of Special Federal Responsibility. It is Bureau policy to seek termination of Federal responsibility for administering the affairs of individual Indian tribes as rapidly as the circumstances of each tribe will permit. This should be accomplished by arrangements with the proper public bodies of the State and local governments to assume responsibility for the services customarily enjoyed by the non-Indian residents, and by distribution of tribal assets to the tribes as a unit or by division of the tribal assets among the individual members, whichever may appear to be the better plan in each case. In addition, responsibility for trust properties should be transferred to the Indians themselves, either as groups or individuals, as soon as feasible.
- .03 Consultation with Indians and Others Affected. It is Bureau policy in its programming activities to consult with the Indian people, State and local government officials, and other parties affected.

CHAPTER 1

DEFINITIONS, BASIC OBJECTIVES,
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*See 72 I.A.M. 1
dated 7-29-54*

CHAPTER 1

ORGANIZATION, FUNCTIONS AND RELATIONSHIPS

Section 101. General Statement. Two fundamental factors influence and condition the Bureau's organization and development and execution of specific programs designed to achieve its basic objectives: (1) the variety and scope of functional activities carried on by the Federal Government for the benefit of the Indian people, such as health, education, welfare, etc., in the field of community services, and land operations, forest management, roads construction and maintenance, etc., in the field of resources management; and (2) the wide geographic dispersion and diverse circumstances of approximately 200 Indian tribes, bands, and groups with which the Federal Government is directly concerned. The Bureau's Line-Staff pattern of organization (See Chapter 2 of Volume I of this Manual) provides both for the application of technical and professional skills and knowledge within each of the functional activities of the Bureau and for the coordination of administrative action within geographic administrative jurisdictions at three levels: The Reservation or Agency Office, the Area Office and the Central Office. The development and execution of Bureau programs to achieve its objectives therefore follows two lines: (1) the functional, covering individual program activities, and (2) the administrative, covering Reservation, Agency, Area and Bureau-wide jurisdictions. It is the responsibility of the various technical and professional organizational units of the Bureau to furnish staff assistance to the Commissioner and other line officers of the Bureau in program planning and coordination along functional lines. The Program Coordination Staff has the primary purpose of giving immediate staff assistance to the Commissioner in program planning, analysis and coordination oriented toward ultimate termination of special Federal control and supervision of Indian affairs.

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Section 102. Organization. The Program Coordination Staff is a staff unit adjunctive to the Commissioner's immediate office. It is under the administrative supervision of a Chief, Program Coordination Staff, who is directly responsible to the Commissioner of Indian Affairs. The unit is small and without formal subdivisions in order to provide flexibility and mobility in assignment of its personnel. Officers of the Program Coordination Staff, who function as generalist staff representatives, report directly to the Chief, Program Coordination Staff.

Section 103. Functions.

- .01 General. The primary purpose of the Program Coordination Staff is to render general staff assistance to the Commissioner in the planning, analysis and coordination of Bureau efforts to reduce Federal participation in the management of the affairs of individual Indian tribes and to transfer its responsibilities for providing services to such Indian tribes to the States and local governments and to the tribes themselves.
- .02 Specific. The specific functions of the Program Coordination Staff are as follows:
- A. To develop concepts and, upon approval and direction of the Commissioner, draft policies which are directed toward developmental assistance for Indians in the process of their social and economic improvement to the end that the special Federal trusteeship may no longer be necessary; and to facilitate the understanding and participation of Indians in the development and implementation of operating programs by which the Indians assume the management of their own affairs as Federal participation is reduced.
 - B. To develop proposed policies and procedures to guide Bureau relationships with Indians to obtain their understanding of and participation in the development of comprehensive programs within specific jurisdictions to effect an orderly reduction of Bureau participation in the management of their affairs.

- C. To develop procedures within established policy to guide Bureau relationships with Indians to obtain their understanding of and participation in the development of comprehensive programs designed for a termination of the special Bureau relationships with specific Indian tribes and groups.
- D. To guide and assist in initiating and conducting fact-finding surveys and analyses of broad Bureau operations to serve as bases for the development of basic concepts and proposed policies to guide Bureau program planning for reduction of Federal participation in the management of the affairs of individual Indian tribes.
- E. To review and analyze current and proposed Bureau programs for their effect upon furthering progress to ultimate termination of Bureau responsibilities in the management of the affairs of the individual Indian tribes.
- F. To assist in the preparation of legislative programs and schedules designed to enable the orderly termination of Bureau responsibilities in the management of the affairs of Indian tribes.
- G. To review and evaluate the progress of the Bureau in reducing Federal participation in the management of the affairs of Indian tribes and to keep the Commissioner and other line officers informed in this respect.
- H. To guide and assist in the coordination of program planning and program development and execution by other staff units of the Bureau which relate to the broad objectives of reducing Federal participation in Indian affairs and ultimate termination of all special Federal relationships with Indian tribes.
- I. To maintain liaison with other agencies, where appropriate, of the Federal, State, and local governments on behalf of the Commissioner as required in connection with Bureau program development to achieve a termination of Federal supervision and control in Indian affairs.

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Section 104. Relationships. Generally, the Program Coordination Staff will have a staff relationship to other organizational units of the Bureau. In carrying out its various functions outlined in Section 103 of this Chapter, personnel of the Program Coordination Staff will work closely with technical and professional personnel of the various functional organizational units having a direct interest in any particular undertaking assigned to the unit. Program Coordination Staff personnel will work with and through the respective line official responsible when their assignments require that they travel within field administrative jurisdictional areas or work jointly with technical and professional staff within the Central Office divisions of Community Services, Resources, and Administration. In specific instances, the personnel of the Program Coordination Staff may be given assignments by the Commissioner requiring that they act in the capacity of his personal representatives. In such cases Program Coordination Staff personnel may be authorized by the Commissioner to exercise discretion specified in instructions given to them by him.

CHAPTER 2

BASIC RESPONSIBILITY AND
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CHAPTER 2

BASIC RESPONSIBILITY AND
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- .01 Line Responsibility. All line officers of the Bureau are basically responsible within the purview of their respective jurisdictions for the development, approval and coordinated execution of over-all programs designed to achieve the fundamental objectives of the Bureau.
- .02 Staff Responsibility. All staff personnel of the Bureau are basically responsible within the scope of their respective functional fields for the initiation, development, and review of component parts of over-all programs designed to achieve the fundamental objectives of the Bureau.

Section 202. General Relationships.

- .01 Between Areas of Administration. Programming relationships between the three areas of administration in the Bureau's organization will generally follow the pattern set forth in Chapter 3, Volume I, Indian Affairs Manual. Each Agency and Local Facility has primary responsibility for programming activities affecting the Indians within its jurisdiction. Each Area Office has primary responsibility for programming activities on an area-wide basis and for programming assistance to Agencies and Local Facilities within its jurisdiction. The Central Office has primary responsibility for Bureau-wide programming activities and for programming assistance to the Area Offices.
- .02 Among Central Office Staff Divisions. Programming relationships among the staff divisions of the Central Office will be governed by the nature of the programming activity involved. The Division of Program is specifically responsible for staff assistance in over-all programming of the Bureau. The Division of Community Services is responsible for staff assistance in

any programming concerned with the special functions within its purview, whether the programming effort is concerned solely with functions of that Division or is also concerned with other Bureau functions in an over-all program. Similarly, the Divisions of Resources and Administration are responsible for staff assistance in any programming concerning their respective special functions. Responsibility for coordinating the programming activities of each Division with related programming activities of the others rests with the respective Division heads.

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6 TRIBAL GOVERNMENT

6.1 General. The basic objectives of the Bureau of Indian Affairs require the development of comprehensive reservation programs suited to the individual circumstances of each tribal group of Indians. Indian understanding and participation are both vital to the success of programs that are meaningful and beneficial for the Indian people. Tribal government and subsidiary tribal organizations provide historically accepted and best suited means through which Indian understanding and participation in such programs can be achieved. In keeping with this viewpoint, there are basic policies to guide Bureau personnel and operational activities in working with Indian groups in developing programs:

- A. Due recognition and respect will be accorded the official representatives of tribal groups.
- B. All official relationships of the Bureau with the tribal membership will be conducted through the recognized tribal governing bodies.
- C. Tribal governing bodies will be consulted in all Bureau program development and operations activities.

6.2 Objectives of Tribal Government. In addition to the specific objectives of its functional programs, the Bureau has some objectives directly concerning tribal government and subsidiary tribal organizations.

- A. Development of Leadership. The Bureau seeks to foster and to help develop informed and experienced leadership for tribal government and business organizations. Able leadership within a tribe is a prerequisite to independent and self-sustaining groups of Indian citizens.
- B. Development of Management Experience. The Bureau seeks to foster and to help develop the management experience of tribal leaders. Systematic and graduated experience in the actual management of governmental, economic and social functions of the tribal group will provide a firm basis for confident assumption of independent responsibility by Indian groups.
- C. Development of Integration. The Bureau seeks to foster and to help develop an integration of Indian tribes into the

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political and economic structure of the State and National communities. Increasing Indian participation in the political prerogatives and privileges of State and National citizenship; development of tribal government and business organizations to parallel the structure and processes of like organizations within the States and counties; will prepare Indian groups to assume fully their rightful places in the State and National communities.

6.3 Inter-relationships of Tribal Governing Bodies. Tribal governing bodies regulate and administer the internal tribal affairs of their tribe within the authorities accorded them by traditions, constitutions and Federal laws. They operate as independent advocates of tribal political, social and economic interests in all official tribal contacts with offices and persons outside of their tribes. In this capacity the tribal governing bodies have the following relationships, which are not to be taken as preclusive of others:

- A. Inter-relationship with National, State and Local Government. With State and local governments, members of Congress and Executive offices of the Federal Government, tribal governing bodies are official organizations representing independent State and National citizens. Their rights of representation, petition and opportunity to be heard are equal to those of other citizen interest groups of the Nation. Like such other groups, tribal governing bodies have independent latitude in exercising legitimate responsibilities of representing the special interests and viewpoints of their tribal memberships.
- B. Inter-relationship with Private Persons and Legitimate Organizations. With private persons and legitimate organizations, tribal governing bodies are official organizations representing independent and private ownership interests of their tribes. They may seek relationships, associations and counsel of private individuals and legitimate organizations within their discretion and they may undertake to deal with such parties socially and economically, subject only to the prerogatives exercised by the Bureau of Indian Affairs over tribal trust property by laws.

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C. Inter-relationship with Agency, Area and Central Office. With the Agency, Area and Central Offices of the Bureau of Indian Affairs and with the Department of the Interior, tribal governing bodies are official organizations representing the direct beneficiaries of the tribal assets under the ministerial trusteeship of those offices. Tribal governing bodies and, in many cases, individual tribal members are also clients of those offices for counsel and advice, and recipients of services designed for Indian social and economic development. Tribal governing bodies have differing degrees of contact with these offices as follows:

- (1) Agency. Agencies carry on the reservation operations of Bureau programs and serve as immediate points of contact with the Bureau for tribes within each jurisdiction. Tribal governing bodies can look to their respective agencies for services offered by the Bureau, for assistance and for local consultation and recommendations. Tribal governing bodies can expect their respective agencies to be acquainted with local situations, and to give them local decisions when trust resources are involved and appropriate authority has been redelegated to the Agency. Tribal governing bodies can also expect their respective agencies to make recommendations to the Area and Central Offices on transactions requiring decision by those offices. Tribal governing bodies can look to their respective Agency offices for guidance in reservation program development, contacts with sources of specialized assistance and sympathetic support in constructive proposals for the well-being of tribal members. Agency offices provide the first point of consultation on all tribal matters related to the Bureau's programs and trust responsibilities.
- (2) Area Offices. Area Offices coordinate Bureau programs and policies on a regional and inter-tribal basis within their jurisdictions, and through the agencies provide an intermediate point of contact with the Bureau for tribal governing bodies. Tribal governing bodies can look to their respective Area Offices for specialized assistance, consultation and recommendations supplementing those of the agencies, particularly in relationships of

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the tribes with other tribes and with the States. Area Offices will be conversant with reservation situations and tribal governing bodies can expect decisions from the Area Offices on transactions related to trusteeship responsibilities and within authorities delegated to the Area Offices. Tribal governing bodies can also expect their respective Area Offices to supplement Agency recommendations with Area recommendations on transactions requiring decisions by the Central Office. Additionally, tribal governing bodies may appeal Agency decisions and actions to the Area Offices.

- (3) Central Office. The Central Office coordinates Bureau programs and policies on a national basis, and through Area Offices and agencies provides a central point of contact for tribal governing bodies on programs of the Federal Government for Indians. Tribal governing bodies can look to the Central Office for specialized assistance, consultation and recommendations supplementing those of the Area and Agency Offices, particularly in relationship of the tribes with other National government offices and with the Congress of the United States. The Central Office may request information and recommendations from the Area and Agency Offices concerning local tribal situations and tribal governing bodies can expect the Central Office to make decisions on transactions related to Bureau trusteeship responsibilities for which authority has not been delegated to Area and Agency Offices. Tribal governing bodies can also expect the Commissioner of Indian Affairs to make recommendations on tribal matters requiring action by the Secretary of the Interior and the Congress of the United States. Additionally, the Central Office will hear tribal appeals from decisions and actions of the Area Offices.
- (4) Department of the Interior. The Department of the Interior exercises discretionary authority over tribal affairs as vested by law. Tribal governing bodies may appeal decisions and actions of the Commissioner of Indian Affairs to the Secretary of the Interior. The Department makes recommendations to the Congress on all legislative matters relating to Indian Affairs.

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6.4 Organizational Forms of Tribal Government.A. Forms of Tribal Governmental and Business Organizations.

All Indian tribes, bands and communities that maintain significant tribal relationships need some form of tribal organization. The forms, authorities and operations of tribal organizations are based upon traditions, treaties, constitutions and special Federal laws relevant to each tribe. Tribes ordinarily have discretion in choosing the particular form of organization suitable to their needs. Bureau employees responsible for working with tribal officials are expected to acquaint themselves with the structure, authorities, operational procedures, and pertinent organic documents for each of the tribal organizations with which they work. Such Bureau employees may consider using the following guidelines in counseling with tribal officials about tribal organizations:

- (1) Help tribal officials to analyze and appraise the needs and purposes which would be served by their organizations.
- (2) Advise with tribal officials on reorganizing to meet changing needs of the tribe.
- (3) Encourage tribal officials to seek practical and compatible organizational relationships for the governmental, social and business operations of the tribe.
- (4) Assist tribal officials to adapt their organizations to specific purposes accommodating needs of communities where these communities form significant elements in the tribal situation.
- (5) Try to orient tribal officials toward model governmental, social and business organizations to the extent that they will serve their own tribal needs.
- (6) Encourage tribal officials to innovate practical reorganizations that provide graduated transition from existing organizational structures, procedures and operational practices to those of successful like organizations within the State and local community.

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- (7) Exercise diligent care that administrative restraints are not imposed upon tribal officials that are not required by law, regulations or trusteeship responsibilities of the Federal Government.
- (8) Exercise equally diligent care that responsibilities and prerogatives of tribal governing bodies are not preempted by Bureau personnel, or that the legal and trusteeship responsibilities of the Federal Government are not subordinated by tribal governing bodies.

B. Departmental Recognition of Tribal Organizations and Officials.

Official recognition of tribal organizations and officials is implicit when they are accepted by the Department of the Interior to conduct business on behalf of the tribal memberships; particularly so, when such organizations and officials deal with tribal assets under the trusteeship of the Federal Government. This official recognition should be based upon knowledge that the organization and officials are duly constituted and authorized according to applicable customs, constitutional provisions and special Federal law, whichever is pertinent in the case of each tribal government. Bureau officials responsible for working with tribal governments are expected to have current knowledge of the significant happenings in the affairs of the tribes with which they work. They should be well enough informed in this respect to report timely and significant information to the Area and Central Offices. Some suggested guidelines include:

- (1) Forward information about changes in tribal officials promptly to the Central Office.
- (2) Advise with tribal governing bodies about appropriate means of furnishing tribal officials with credentials of office and authority to transact business on behalf of their tribes.
 - (a) Tribal notice in writing of newly selected officials, their terms and official capacities is desirable.

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- (b) Official tribal delegations authorized to deal with other organizations and agencies will find it helps to have supporting resolutions of the tribal governing body identifying them and showing the nature of business to be transacted by the delegation when appropriate, the policy or position adopted by the tribe in reference to the business to be transacted.
 - (c) Such supporting credentials will make it simpler for Bureau personnel working with tribal officials to help them arrange appointments when necessary and to furnish them with pertinent information available from Bureau offices, especially when the tribal officials are to deal with higher offices of the Bureau and the Department.
- (3) Maintain the official relationships of the Bureau and recognized tribal officials; and support and encourage other persons' business with the tribes to be transacted through the recognized tribal officials.
 - (4) Field employees should be aware of delegations of authority (see I4 IAM 1-2-3) and keep tribal officials and officers informed of requirements in those instances where Bureau approval or review of tribal actions are necessary.
- C. Selection and Tenure of Tribal Officers. The number of tribal officers, their titles, duties and tenure will vary from tribe to tribe according to the needs and situations of each tribal organization. The means of selecting their officers is determined by each individual tribe, some according to traditional appointment, some by popular election at large, some by election from council membership, and others by Federal executive appointment. These means of selecting tribal officers are variously prescribed by tribal custom, constitutional documents, and special Federal law.
- (1) Bureau Interest in Selection of Tribal Officers. The Bureau of Indian Affairs is interested in the selection of officers only to counsel with the tribe to follow their own prescribed procedures where these procedures

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are known to the Bureau and not to influence the selection of any individuals among them. In this respect, Bureau officials responsible for working with tribal governments are expected to familiarize themselves with such procedures insofar as feasible.

- (2) Tenure of Tribal Officers. The tenure of tribal officers will vary from tribe to tribe according to appropriate custom, constitution and bylaws or Federal appointing procedures. The Bureau encourages adjustment of the tenure of tribal officials to suit the needs of the tribe concerned. Frequently, the terms of tribal officials may be too short to foster continuity of tribal programs. Continuity of leadership may be accomplished by staggering the terms of office and lengthening terms of office. In most instances of tribes presently organized, this can be accomplished only through amendments to the tribal constitution.

- D. Defunct Tribal Organizations. Formal tribal organizations, for whatever purposes conceived, must be suited to the needs of the tribe to be effective. When a tribal organization no longer serves the purposes for which it was conceived, it becomes defunct in fact. Theoretically, a tribal organization continues to exist, particularly those constitutionally based, until some overt and positive action abolishing or modifying the organization is taken by those empowered to take such action. This may be accomplished by the tribal members, the governing body or the Congress of the United States.

- E. Recall of Tribal Officials. Recall is the removal of an official from office by special election of qualified voters. Constitutional recall provisions should be recommended to those tribes whose constitutions do not provide for recall. Constitutional recall provisions should specify the procedure to be followed in recalling tribal officials. The recall procedures should require the official concerned to be notified of the charges against him and be given reasonable opportunity to be heard in his own defense. The official concerned may resign to avoid repudiation by recall.

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- F. Impeachment of Tribal Officials. Impeachment is a means of trying a public official for serious misconduct and can lead to acquittal or removal of an official from office. Impeachment proceedings require specification of charges against the official and his trial on those charges by the governing body of the tribe. Amendments to the tribal constitution may be recommended to those tribes whose constitutions do not provide for impeachment proceedings. Constitutional provisions for impeachment proceedings should specify the basis and the type of notice of charges and the parties to give such notice to invoke impeachment proceedings against a tribal official. The constitutional provisions should also provide a procedure for the official to respond to the charges and be heard in his own defense. Impeachment proceedings should not be substituted for popular control of tribal officials by election, and should rarely need to be invoked.
- G. Bureau Employees as Tribal Officers. The Bureau of Indian Affairs and the Department of the Interior are sympathetic to the need of tribes to draw upon the best leadership available within their memberships. However, when Civil Service employees of the Bureau are involved, there are these factors to consider:
- (1) The well-being and development of the interests of tribal members may require that the tribes engage directly in State or National political activity on their own behalf. Civil Service employees are restricted in their participation of National party political activities by Federal law. Those tribes that select Civil Service employees for tribal offices will be deprived of effective representation of their political interests. (Sol. Op. Sept. 10, 1940 re Hatch Act. Illustration No. 5)
 - (2) Bureau employees selected by their tribes for tribal office may find themselves in a compromising position in representing tribal viewpoints that differ with Bureau policies. Inevitably in this kind of situation, the individual employee must prejudice either his representation of tribal viewpoint or his acceptance of the Bureau's policies involved, regardless of his course of action.

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- (3) Tribal selection of one of the members who is also a Bureau employee gives rise to the possibility of feeling among other tribal members that the Bureau can exercise undue influence on internal tribal affairs through the employee serving as a tribal officer.

Because of the foregoing factors it is not recommended that Bureau employees serve in the capacity of tribal officers. Further, because of Government responsibility for requiring adequate performance of duties attached to Civil Service jobs, Secretarial Order No. 1912 was issued on December 20, 1943. This Order is still in force and is a regulation of Bureau employees and not to members of Indian tribes. (Illustration No. 6, Secretarial Order No. 1912)

- (4) Since the Government does not desire to impose undue hardship upon the Indian tribes nor be arbitrary in the face of possible extenuating circumstances in the availability of leadership for Indian tribes, Secretarial Order No. 1912 provides in paragraph four for exceptions to be granted by the Commissioner of Indian Affairs. The following factors, among others relevant to the local situation, should be considered in favoring any requests for exceptions to Secretarial Order No. 1912:

- (a) Tribal need of the services of the employee in the capacity of a tribal official is very real and should be expressed in writing by responsible tribal leaders.
- (b) The tribal office of the employee does not carry the responsibility of direct representation of the tribe before higher offices of the Bureau and Department or before political officials of the State, National and local Governments.
- (c) The employee's Civil Service job is not significantly related to implementation of Bureau policies and programs.

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- (d) The duties of the employee's tribal office will not significantly interfere with the duties of his Civil Service job.
- (e) The employee does not actively campaign for the tribal office for personal reasons.
- (5) Bureau employees for whom exceptions to Secretarial Order No. 1912 have been granted must also abide by Bureau policy governing the conditions under which they may receive compensation from the tribes. This policy is as follows:
- Employees will not be compensated by both the Government and the tribe for the same period of service. An employee excused from duty to perform such services for the tribe during his assigned hours of Government duty may be carried on any annual leave to his credit if he is not compensated by the tribe, but he must be placed on leave without pay if he receives compensation from the tribe. In this connection reimbursement for subsistence and travel expenses is not considered compensation. Per diem payments in excess of such travel expenses, or salary payments would be considered as compensation.
- (6) There is no prohibition against a Bureau employee running for tribal office, provided such activity does not interfere with his performance of official duties as a Bureau employee. Such an employee should be placed on annual leave, or leave without pay if he has none, during the time he is running for tribal office. If he wins and accepts tribal office, he must comply with the terms of Secretarial Order No. 1912. (Illustration No. 6)
- (7) Tribal governing bodies may take advantage of the abilities of tribal members who are Bureau employees without having them hold tribal office, if the governing bodies wish to do so. This can be accomplished by appointing such members to serve on tribal committees which are advisory in nature and in which

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the committee members do not have voting rights in the proceedings of the tribal governing body on the basis of committee membership. Bureau employees may contribute to the well-being of their tribes in this manner so long as such activity does not interfere significantly with performance of their official duties as Bureau employees.

- H. Determinations of Election Procedures. Some tribes have election procedures prescribed in their constitutions which make those procedures difficult to adapt to the changing needs and experience of the tribal membership. Most constitutions, however, vest the authority in the tribal council to prescribe regulations for the selection of councilmen. A greater degree of flexibility in the adaptability of election procedures to the current needs and experience of tribal memberships can be provided by prescribing the election procedures in tribal ordinances or codes. Bureau officials responsible for working with tribal governing bodies operating under written constitutions should encourage them to develop election ordinances or codes if they have not already done so. Such Bureau officials should counsel with the tribal leaders in developing the particulars of the election procedures. Usually the State election laws provide a comprehensive source of reference material which tribes may find to be helpful and which may also serve to acquaint the membership of the tribe with State and county election methods.

- 6.5 Tribal Legislative Jurisdiction. Tribal legislative jurisdiction encompasses all matters of tribal affairs except as restricted by applicable Federal laws and, in some cases, State laws. This jurisdiction extends to cover all members of the tribe and all tribal lands.

Bureau officials responsible for working with Indian tribes should be familiar with any special Federal laws, as well as any State laws, that are applicable to the tribes with which they work and advise with tribal leaders when questions of tribal legislative jurisdiction arise. Those tribes having written constitutions must be governed by the provisions of their constitutions. Assistance in resolving questions of tribal legislative

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jurisdiction may be obtained from Field Solicitors of the Department of the Interior, tribal attorneys employed by the tribes as general counsels, Area Offices or from the Central Office.

- A. Definition and Interpretation of Tribal Powers. Generally, the definition and interpretation of tribal powers is within the discretion of the tribes themselves. In cases of tribal governments operating under unwritten tribal customs, Bureau personnel working with tribal leaders can only advise with them on tribal powers to the extent such personnel themselves are familiar with appropriate customs of the tribe. Bureau personnel can more readily advise with tribal leaders on tribal powers when their tribes have written constitutions. In this respect, assistance may be obtained from the Area Office, Central Office, or from attorneys employed by the tribes and attorneys in the Solicitor's Field Offices. In cases where special Federal laws define tribal powers, these will govern.

Unless circumscribed by Federal law, all tribes have at least the following powers:

- (1) To adopt a form of tribal government of its own choosing through which the will of the tribe may be expressed. (83 IAM 6.4 A)
- (2) To define the conditions governing membership in the tribe, including rules for adopting of members and loss of membership. (83 IAM 8)
- (3) To regulate the domestic relations of members.
- (4) To prescribe rules of inheritance, excluding allotted lands and trust assets subject to the probate jurisdiction of the Secretary of the Interior.
- (5) To levy dues, fees or taxes on members of the tribe; and fees upon non-members residing or doing business on tribal land, subject to the approval of the Secretary of the Interior.
- (6) To regulate the use and disposition of all property within the jurisdiction of the tribe.

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- (7) To control the conduct of members through municipal enactments. To administer justice with respect to all disputes and offenses among members of the tribe, excluding the 10 major crimes.
- (8) To employ legal counsel, subject to the approval of the Secretary of the Interior. (83 IAM 7.)
- (9) To exclude trespassers from their reservations.

In addition, the following specific powers were conferred upon Indian tribes that accepted the Indian Reorganization Act (48 Stat. 984). (Illustration 1)

- (1) To prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the tribe.
- (2) To negotiate with Federal, State and local governments.
- (3) To be advised by the Federal Government as to all appropriation estimates and Federal projects designed to benefit the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.
- (4) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

Bureau officials who deal with tribal governments are expected to have a broad understanding of these tribal powers and are directed to abide by governing tribal customs and by the provisions of written tribal constitutions, bylaws and charters for tribes having such approved or recognized organic documents. Actions taken by tribal councils must conform to the provisions of such organic documents since such tribal councils are dependent on authorities conferred on them by the tribal membership and they do not have the power to exercise authority unless specifically granted by their electorate. Generally, for tribes having such written organic documents approved by the Secretary of the Interior under authority of the Indian

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Reorganization Act, all rules and regulations promulgated by the Interior Department are inapplicable to such tribes insofar as they are inconsistent with the provisions of such organic documents. Specific questions in this regard should be submitted to the Commissioner of Indian Affairs for resolution.

6.6 Conduct of Tribal Business.

- A. General. Tribal business may be conducted through tribal enactment of ordinances and resolutions, meetings, correspondence and delegate conferences. Bureau officials working with tribal governing bodies are expected to become familiar with accepted practices of conducting business affairs, and to encourage tribal officials to conduct tribal business in an orderly fashion following suitable practices.

Bureau officials should counsel with tribal officials on informing tribal memberships of tribal business. Tribal legislative actions, both written and unwritten, make up a body of tribal law, and, like legislative actions of the Federal, State and local governments, tribal legislative actions should be communicated to tribal members.

Distribution of written tribal enactments, annual and periodic reports, and open meetings are suggested for recommendation to tribal officials. In appropriate cases, Bureau officials should also recommend that individual representatives or councilmen report to their constituents on actions taken by the tribal governing body.

Government review and/or approval of certain tribal legislative actions are written into some tribal constitutions adopted under the Indian Reorganization Act. Even in some cases of tribes not organized under that act, Congressional legislation or regulations pursuant thereto, may specifically require government approval of certain tribal legislative actions. (e.g. Proposed expenditures of compensation funds deposited to the credit of different Pueblos must be approved by the Commissioner of Indian Affairs in accordance with the Act of August 9, 1937 (50 Stat. 564-616)). Whether or not tribes have governments organized under the Indian Reorganization Act or its supplements, tribal governing

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bodies can expect that their legislative enactments will be given due consideration in the Bureau of Indian Affairs and the Department of the Interior.

Some suggested guidelines for operating Bureau personnel to consider in advising with tribal governing bodies in the conduct of tribal business are offered in the subsections that follow.

- B. Tribal Ordinances and Resolutions. Tribal ordinances are written laws of the tribe, and tribal resolutions are formal written expressions of the opinion or will of the tribal governing bodies. Both are adopted by vote of the governing bodies in official proceedings. Not all tribal governmental actions are expressed in writing, of course, but Bureau personnel working with tribal governing bodies should strongly encourage them to adopt the practice of evidencing tribal legislative actions by written ordinances and resolutions.

Suggested guidelines that Bureau officials counseling with tribal governing bodies may consider are offered below:

- (1) Format and Content.
 - (a) A standard formal heading should be developed which appropriately identifies the tribal governing body and should indicate the official character of the document. The constitution and bylaws of many tribes specify the language to appear at the heading of an ordinance or resolution.
 - (b) When appropriate, each ordinance or resolution should cite the constitutional or charter provision giving enabling authority for the governing body to act on the subject matter of the document.
 - (c) Each ordinance or resolution should be manually signed by appropriate tribal officers, certifying to the enactment and giving date of the enactment and the vote cast.

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- (d) If approval by Bureau officers is required by tribal constitutional provisions according to subject matter, their endorsements should appear below or to the left of the signatures of the tribal officers and the date of their endorsement should be indicated.
 - (e) In those instances in which an ordinance or resolution may be unacceptable to the Superintendent who disapproves it, the charter or constitutional provisions for appeal shall govern. In the absence of appeal procedures, the governing body may appeal to the Area Director, Commissioner of Indian Affairs or Secretary of the Interior.
 - (f) Ordinances and resolutions are important documents and suitable attention should be given to drafting them so as to make clear the intent or purpose of the governing body. Tribal leaders should be encouraged to draft ordinances and resolutions themselves. However, Bureau personnel working with tribal officials should give them assistance in writing tribal ordinances or resolutions when necessary, particularly when the subject matter has significant implications for the tribal interests.
 - (g) Sufficient copies of the ordinances or resolutions should be made, appropriate to the distribution required by the subject matter. Field offices may assist tribal governing bodies unable themselves to reproduce tribal documents, within limits of personnel, equipment and materials available.
- (2) Government Approval of Tribal Ordinances and Resolutions.

Tribal ordinances and resolutions generally do not require the approval of Bureau officials unless:

- (a) The terms of the tribe's constitution or charter specify that approval or review is required for the enactment to become effective.

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- (b) Special Federal legislation and regulations may make specific actions of the tribe subject to review or approval.

Tribal resolutions that express the position of the tribe in regard to proposed legislation, policies or programs, or which request action by Federal, State or local government offices and other organizations, do not require approval or endorsement by Bureau officers. Some tribal constitutions and charters contain provisions authorizing legislative action on which further review or approval is not required. The only restrictions on such actions would be the laws and constitution of the United States and the wishes of the tribal members, where tribal actions are subject to referendum.

Although a tribal ordinance or resolution may not require Bureau review or approval, Bureau officials should be guided by the subject matter in determining whether they should separately concur in the tribal action and/or make appropriate recommendations, especially when the subject matter falls within the responsibility of the Bureau. For this reason and for informational purposes, it is desirable that copies of all tribal ordinances and resolutions, together with pertinent minutes of meetings, be forwarded to the Area and Central Offices of the Bureau.

- (3) Motions. Motions generally have the same effect as ordinances and resolutions. When a motion is sufficiently important to require responsive action by Bureau officials, the governing body should be urged to translate the motion into a resolution and to submit it separately from the minutes of the meeting in which the motion was made.
- (4) Ordinances and Resolutions Requiring Departmental Approval or Review. There are two separate procedures for Departmental approval and for Departmental review of tribal ordinances and resolutions, where such action is required by constitutions. They should be handled as follows:

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- (a) Approval by the Secretary of the Interior requires no formal action by the Superintendent or the Area Director other than a recommendation, and the action of approval may be completed by the Secretary or his authorized representative at any time.
- (b) The procedure for review, as set forth in tribal constitutions requires that the Superintendent either approve or disapprove the tribal enactment within a specified number of days from the date of its adoption by the tribal governing body. If the Superintendent approves, he should indicate his approval by affixing his signature under the word "Approved", and indicate the date of his approval, then forward the ordinance or resolution to the Secretary. The Secretary has 90 days from the date of adoption within which to approve or rescind the enactment. If the Superintendent disapproves, he is to return the enactment to the tribal governing body, giving his reasons in writing for disapproving same. If the tribal governing body believes such reasons to be insufficient, it may, by a majority vote, refer the matter directly to the Secretary of the Interior without further action by the Superintendent taking care such action is taken well within the 90-day review period. The Secretary may, within 90 days from the passage of the ordinance or resolution, approve the enactment in writing whereupon it shall become effective. The Secretary has delegated to the Commissioner the authority to act for him in approving or favorably reviewing ordinances and resolutions, but has retained the authority to rescind or disapprove. The Secretary of the Interior has requested all documents requiring his review be submitted to the Department at least 30 days before the expiration of the 90 day period in order to permit careful review.
- (c) The Superintendent in transmitting ordinances and resolutions should convey his recommendations to

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the Area Director. The Area Director should in turn make appropriate comments and recommendations and transmit them to the Central Office, accompanied by the Superintendent's remarks and the required original and copies of the ordinance or resolution. Ordinances and resolutions subject to review must be acted upon promptly because of the time limit of ninety (90) days within which they must either be favorably reviewed by the Commissioner or rescinded by the Secretary of the Interior. (See Illustration No. 4, Commissioner's memorandum of June 11, 1957). When final action is taken in the Central Office, the original ordinance or resolution shall be returned to the Area Director for delivery to the Superintendent. The Superintendent shall deliver it to the proper tribal official. Should ordinances or resolutions be received in the Central Office without having been cleared through the Superintendent and the Area Director, they shall be promptly forwarded to the Superintendent for review and submission in the prescribed manner. In each instance, a copy of the transmittal letter shall be forwarded to the Area Director by the Central Office. Failure of field personnel adequately to consider or to transmit important tribal actions without sufficient comment to enable prompt careful evaluation of the field's position only serves to delay decisions and results in needless correspondence.

- (5) Codification of Tribal Enactments. When a tribe has enacted a number of ordinances and resolutions bearing on the same subject, codification of those enactments by subject matter offers these advantages:
- (a) Ease of locating tribal laws significantly bearing on a categorical subject matter.
 - (b) Review and coordination of tribal enactments dealing with a given subject.
 - (c) More concise expression of tribal laws and policies by enactment of code and rescission of previous enactments.

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Bureau officials working with tribal governing bodies should recommend codification of tribal enactments to tribal officials when appropriate. In codifying tribal enactments, the tribal governing body may reenact the provisions of the code in total and rescind the prior separate ordinances and resolutions.

- C. Meetings. Meetings of tribal governing bodies are generally open to tribal members, except when the governing body is meeting in executive session, and offer one effective means of keeping tribal members informed on tribal affairs. Bureau officials should encourage tribal officials to conduct open meetings and invite discussion of important matters by the tribal membership according to parliamentary rules where tribal customs do not govern. Bureau officials should also encourage and assist tribal officials in obtaining meeting places suitable for open meetings and conducive to respectful and dignified deliberations of the governing body.

Tribal officials should be encouraged to conduct their meetings and deliberations independently of Bureau officials. When it is necessary for Bureau personnel to attend and participate in meetings of the governing body on a consultative basis, this should be by invitation. Such invitation should be directed to the Superintendent even though the presence of an employee under his supervision may be desired, since the Bureau expects program development and supervision to be the responsibility of the Superintendent. Bureau officials should keep tribal officials informed of important problems so that tribal councils will be in a better position to extend invitations. In dealing with tribal governing bodies, Bureau officials should abide by parliamentary rules or tribal custom courtesies.

- D. Minutes. While the keeping of tribal minutes is not mandatory unless the tribe's constitution requires it, the advantages of keeping adequate written minutes of meetings should be explained to tribal officials. Minutes of meetings provide a semi-permanent record of official proceedings of the tribal governing body which can be used to acquaint incoming tribal officials with tribal deliberations preceding their tenure. Written minutes also furnish

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an excellent means of informing tribal members and others of important tribal proceedings. Where facilities and staffing will permit the Bureau field offices may give reasonable help in duplicating minutes for tribal governing bodies otherwise not able to duplicate minutes for distribution. Following are other suggestions Bureau officials should consider in counseling with tribal officials about minutes or meetings:

- (1) Careful record in the form of minutes should be kept of all tribal meetings, including special meetings. The minutes should give a full summary of the meeting, although they need not be a verbatim report. The following information should always be included:
 - (a) Name of tribal organization.
 - (b) Place, date, and time of meeting, and whether a regular or special meeting, as provided in the tribal constitution if applicable. If a special meeting, by what authority the meeting was called and for what special business.
 - (c) Name of presiding officer.
 - (d) Whether or not a quorum was present. This is important, as no action taken by a council would be valid if a quorum is not present. In case of general councils, or similar meetings of the whole tribal body, if no quorum is required, information should be given showing the number in attendance and any districts represented.
 - (e) On any ordinance, resolution, motion, or other question put to a vote, the actual results of the vote should be given. This may consist of a count of hands or an indication that no dissent was expressed.
- (2) The following copies should be made of the minutes: One or more copies should be retained by the tribe for its permanent record; one or more copies for the Area Office and the Agency, as these offices may desire; at least six copies are desirable for the Central Office.

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- (3) The minutes should be indexed, so that anyone examining the minutes may readily see what questions were discussed and what action taken. Should the governing body fail to index the minutes it should be brought to its attention with the request that it adopt the practice. With a heavy volume of minutes, often consisting of many pages, careful indexing permits rapid distribution at the Central Office to appropriate branches and permits branch review without having to read a voluminous report to search out the subject matter of interest to the particular branch.
- (4) The minutes will serve only to provide information. Official action will not be taken by the Central Office or by the Department on any resolution, ordinance, recommendation, request or other matter contained in the minutes alone. If a tribal governing body passes an ordinance on a subject requiring Secretarial review or approval, such ordinance should not be presented to the Secretary until the tribal governing body has submitted it separate and apart from the minutes. Not more than one subject should be discussed in any ordinance or resolution.
- (5) Minutes of tribal meetings are not subject to approval by any official of the Bureau and should not be endorsed by the Superintendent, Area Director, or any other official of the government.
- (6) Minutes, resolutions and ordinances are property belonging to the tribe and officers or officials of the tribe should under no circumstances dispose of those records or consider them as personal property to be taken when they leave office. Tribal records are important to the members of the tribe and often are developed at considerable expense to the tribe.

E. Tribal Correspondence. Much of the tribal dealings with the Bureau of Indian Affairs is conducted through correspondence. While tribes are free to direct such correspondence directly to the Area and Central Offices of the Bureau, or to the

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Department and other offices, it will expedite responses to tribal communications if they are handled in the following manner:

- (1) Tribal correspondence addressed to the Superintendent should be answered by direct written reply. The Superintendent should consult with the Area and Central Offices before he replies if the need for this is indicated by the subject matter of the tribal correspondence.
- (2) When tribal correspondence is addressed to the Area Office, the Superintendent should forward the correspondence to the Area Director, together with suitable comments of his own.
 - (a) The Area Office should communicate with the Central Office before replying if the need for this is essential.
 - (b) The Area Office should then send the reply through the Superintendent.
 - (c) If the Area Office receives tribal correspondence directly from tribal officials, the Area Office should acknowledge receipt of the correspondence and then consult with the Superintendent before the reply is prepared if this need is indicated by the correspondence subject matter. The Area Office, within its discretion, should then send the reply through the Superintendent or send the reply directly to the correspondent and send copies of the reply to the Superintendent.
- (3) When tribal correspondence is addressed to the Commissioner, the Superintendent and the Area Director shall forward the correspondence to the Central Office, together with recommendations and information from each officer. This is particularly important when major tribal propositions are being submitted.

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- (a) The Central Office should communicate further with the Area or Agency Offices before the reply is prepared if the need for this is indicated by the subject matter of the correspondence.
 - (b) The Central Office should then send the reply through the Area Director and Superintendent with copies for their files.
 - (c) If the Central Office receives tribal correspondence directly from tribal officials, the Central Office should acknowledge receipt of the correspondence and then consult with the Area Director and Superintendent before the reply is prepared if this need is indicated by the correspondence subject matter. The Central Office, within its discretion, should then send the reply through the Area Director and the Superintendent or send the reply directly to the correspondent and send copies of the reply to the Area Director and Superintendent. Such correspondence should be addressed to the presiding officer by title of position rather than by name. This will minimize tribal officers considering such mail personal rather than as official tribal mail.
 - (d) Alternatively, when the Central Office receives tribal correspondence directly, it should acknowledge receipt of the correspondence and, within its discretion, transmit the correspondence to the Area Director for his reply to the correspondents. The Area Director should then prepare a suitable reply, consulting with the Superintendent if necessary, and send the reply either through the Superintendent or directly, as with correspondence addressed to the Area Director.
- (4) When Central Office correspondence with tribal officials is sent through the Area Director and Superintendent, they should review the correspondence and, if in their discretion any changes should be made, submit a proposed redraft, together with the original correspondence, to the Central Office for approval and signature.

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- (5) Responsive correspondence initiated by the Area and Central Offices will usually be prepared in one of the operational branches, and the need for several branches to act on a piece of correspondence embodying several subjects may create delay in sending the responsive correspondence. Bureau officials working with tribal officials should, therefore, advise them that tribal transactions by correspondence can be processed more expeditiously when separate items of subject matter are treated in separate pieces of correspondence. Considerable emphasis should also be given to the importance of channeling correspondence through proper officials. Short cuts from the tribe to the Commissioner of Indian Affairs usually mean a delay until appropriate field reports are received.

- F. Tribal Delegations to Washington, D. C. Tribal governing bodies have the same right to petition the Congressional delegations representing their home states and the various executive offices of the Federal Government, that other citizens have. The trips of official tribal delegations designated to represent their tribes before Government officials in Washington, D. C. may be financed from appropriated treasury funds to the credit of the particular tribes by making advance arrangements with the Central Office. (83 IAM 9) The Branch of Tribal Programs in the Central Office will also arrange appointments with Central Office officials when this is desired and sufficient advance notice is given.

Tribal governing bodies should be counseled to authorize the delegation to represent their tribes by appropriate resolutions. Such resolutions should indicate the names of the delegates, the subject of their business and the proposed length of their stay and their rates of salary, per diem, mileage and other allowances. A proposed agenda of separate business items is helpful when the delegation meets with Central Office officials.

Agency and Area officials will aid in the transaction of the delegations' business with Central Office officials by:

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- (1) Discussing locally and resolving with the tribe those problems which can be handled by the Agency and the Area Office, under appropriate delegation of authority.
- (2) Forwarding pertinent background data, indicating any relevant local actions taken on the items of business of the delegation, and making appropriate recommendations.
- (3) Notifying the Central Office sufficiently in advance, when possible, of the proposed visits of tribal delegations and, when necessary, recommending, with justification, whether Area or Agency officials should be present with the delegation.
- (4) Frequent experience has revealed a tendency on the part of tribal delegates to discuss "other business" as a convenience while in Washington. The Central Office is often disadvantaged because it is not known whether the delegates are properly authorized to represent the tribe on those matters; whether there has been field consideration of the subjects; whether tribal delegates have full knowledge of the problems to properly represent the governing body, or whether they are in fact in violation of their own organic documents by not having received appropriate delegations of authority to act for and on behalf of the governing body. Tribal officials and governing bodies should be advised that in the absence of a resolution specifically delegating authority to take conclusive action by delegates on tribal matters definite commitments can ordinarily not be made, particularly where authority to act is clearly within the authority of the governing body by their constitution and charter.

6.7 Readjustments to Meet Changing Needs.

- A. Adapting Tribal Organization. Tribal organizations, like any other organizations, should be suited to the current needs of the tribal membership. As the needs and circumstances of the tribe change significantly, tribal organizations should be adapted to suit the changes.

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Most tribal organizations provide for a tribal council whose members are selected by custom or election. Usually, this council represents and transacts all affairs for the tribe whether political, social or business. The council members may or may not receive pay and allowances for their services.

Bureau officials working with tribal governing bodies should be alert to changes developing in tribal circumstances and advise with tribal leaders about practical organizational changes to meet their needs:

- (1) In some cases, the need for increasing attention to tribal affairs might be met by vesting the chief tribal officers with expanded executive authority and responsibility; by the appointment of subordinate boards and committees; and by establishing law and order codes, tribal courts and law enforcement units, etc.
- (2) When the volume and scope of tribal activities increase sufficiently and tribal finances will permit it, the tribe may find it advantageous to pay one or more tribal officials to give full-time attention to tribal affairs. Many tribal governing bodies find the employment of skillful experienced persons outside of the tribal membership provides management strength in keeping with competitive business operations.
- (3) In most cases, where the tribal workload and program emphasis require it and the tribe is able to afford it, the tribe employs its own operating staff to handle tribal business affairs.

B. Enlarging Tribal Responsibilities. As tribal leaders acquire graduated experience in the processes of municipal government, business operations and political participation in Federal, State and local governments, their capacity to assume increasing responsibilities should change correspondingly. Bureau officials should be alert to this change and help the tribes, as rapidly as tribal situations reasonably warrant:

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- (1) To assume increasing responsibility for their own governmental and business affairs, independent of supervision by the Bureau and the Secretary of the Interior.
- (2) To look to State and local governments and Federal agencies other than the Bureau of Indian Affairs to obtain the public services now supplied by such Bureaus. The Secretary of the Interior, or the Commissioner of Indian Affairs acting for him, must, of course, be satisfied that assumption of increased authorities and responsibilities by the tribal governing body will not result in negligence or failure damaging to the interests of the tribal membership. So long as the Federal Government is trustee for tribal property, there must be assurance that damage will not result from actions taken under tribally assumed authority for which the Federal Government may be liable. (e.g., Section 6 of the Indian Reorganization Act requires all leases, permits and timber sale contracts to conform to Secretarial regulation of community grazing and timber lands, and even though a tribe chartered under the Indian Reorganization Act may, as authorized in its charter vote to terminate the requirement of Secretarial approval of leases on tribal lands, the tribe cannot override the trust responsibility of the Secretary of the Interior under law. It is apparent that special enabling legislation will be required before Indian tribes can assume those certain authorities and responsibilities which impinge upon the basic Federal trusteeship.)

Within this general limitation tribal authority and responsibilities may be enlarged in various ways.

- (1) By Delegation. One of the primary purposes of the Bureau in fostering tribal organizations is to develop adequate vehicles for transferring appropriate authorities and responsibilities from the Government to the tribes wherever this may be done under enabling legislation.

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- (a) Tribal constitutions adopted under the Indian Reorganization Act and the Oklahoma and Alaska supplements, usually provide that tribal governing bodies may exercise such additional powers as may be delegated to the tribe by the Secretary of the Interior or any other duly authorized official or agency of the State or Federal Government.
- (b) There is usually the further provision in such tribal constitutions that the governing body may, through amendment of the constitution and bylaws, exercise such additional powers that the tribal members delegate to it.
- (c) Tribal charters of incorporation issued under the Indian Reorganization Act, as amended, also usually provide that the tribal corporation may exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.
- (d) Tribal governing bodies not organized under the Indian Reorganization Act may assume such additional powers as the Secretary of the Interior or the tribal memberships may legally delegate to them.
- (2) By Removing Supervision. Certain supervisory powers were retained by the Secretary of the Interior over various corporate actions of tribes at the time they were chartered under the Indian Reorganization Act or its supplements. Most of the charters specify the process by which certain of these supervisory powers can be terminated. The charters are similar in the subject matter over which such supervision will be exercised. These include the following:
- (a) Leases and permits of tribal lands.
- (b) Timber sale contracts.
- (c) Certificates of interest in corporate property.

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- (d) Borrowing money from the Federal Government or from other sources.
 - (e) Making contracts.
 - (f) Pledging or assigning of chattels or income.
 - (g) Depositing funds in local depositories.
 - (h) Distribution of corporate dividends.
- (3) The procedure by which the Secretarial supervisory powers over certain corporate actions of tribes chartered under the Indian Reorganization Act may be terminated in accordance with the procedures set forth in the charters.
- (a) Usually, it is provided that after a fixed number of years the tribal governing body may request the Secretary of the Interior to submit the question of terminating his supervisory powers to a vote of the tribe.
 - (b) Tribal vote is required to terminate the Secretary's supervisory powers in each instance.
 - (c) When the Secretary approves a request to terminate his supervisory powers, he submits the question to a tribal referendum and the supervisory powers specified in the charter are terminated if a majority of 30 percent of the eligible voters vote in favor of it.
 - (d) If the Secretary disapproves the request or is unwilling to call an election upon the question, the governing body may submit the question to a referendum. The Secretary's supervisory powers are terminated if 2/3 of the eligible voters vote in favor of such termination.

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- (e) The termination of the specified Secretarial supervisory powers in the tribal charter does not:
- (1) terminate trusteeship prerogatives.
 - (2) affect other powers in the tribal constitution or charter which are subject to review or approval by the Secretary.

- C. Enabling Legislation. Bureau officials working with tribal leaders can anticipate that there will be stages where further progress in making practical and graduated readjustments in tribal organization and management of tribal affairs will be hampered for lack of existing enabling legislation. When a tribe's situation has reached a stage that further progress in readjustments is circumscribed for this reason, the Bureau officials working with the tribe should be alert to the possibility of seeking new enabling legislation.

The plenary power of Congress over Indian affairs is practically limited only by the constitutionality of the laws it may adopt and the realities of tribal situations. The Bureau of Indian Affairs strongly encourages its personnel working with tribal officials to make continuing realistic appraisals of tribal situations and to make proposals for needed enabling legislation. For this purpose, the Central Office before each new Congress convenes, requests field offices to submit suggestions for such needed legislation.

In this respect, following are some suggestions that Bureau officials working with tribal officials should consider:

- (1) Proposals for new enabling legislation may be based on limited phases of the tribes' affairs or on a comprehensive program for the tribe.
- (2) The proposals should embody specifically defined purposes realistically related to the political, social and economic circumstances of the tribe.

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- (3) Field officials may call upon the Central Office for consultation and assistance in working with tribes to develop suitable programs for readjustment and the proposed legislation needed to implement them.
- (4) The resources of other agencies of the Federal, State and local governments may be brought to bear significantly on difficult problems of readjustment and needed enabling authority.

6.8 Tribal Constitutions.

A. General. The Bureau of Indian Affairs encourages tribes to develop written constitutions embodying the fundamental municipal laws and principles of their tribal governments when there is need for governmental and constitutional powers. The Bureau encourages those tribes that already have written constitutions to keep them revised to suit changing needs. Bureau personnel working with tribal leaders should counsel with them to develop written constitutions when the tribes have none and when a practical need for governmental organization exists. A written constitution affords several advantages, both to the tribe and to Bureau officials working with tribal leaders:

- (1) It provides for a definition of tribal powers and rights of tribal members which can be more readily understood by all concerned.
- (2) It provides the best basis for common recognition of the authority and responsibilities of the officials selected by the tribal members.
- (3) It provides the most effective basis for determining which of contending tribal factions is properly vested with governing authority.
- (4) It provides a framework for the orderly conduct of tribal affairs to which all concerned can refer.

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- (5) It provides a means of graduated tribal experience toward political integration through the embodiment of political precepts fundamental to Federal, State and local government, such as:
- (a) Consent of the governed.
 - (b) Popular control and participation in government.
 - (c) Free elections.
 - (d) Majority rule.
 - (e) Civil rights.

Tribes which come within the purview of the Indian Reorganization Act, as well as those that elected to remain outside its purview, can have written constitutions and bylaws. Tribal governments based on written constitutions have been recognized by the Department of the Interior and by the courts even though the constitutions were not explicitly approved by the Secretary of the Interior or the Commissioner of Indian Affairs. (Handbook of Federal Indian Law, p. 127). However, approval by the Secretary of the Interior or Commissioner of Indian Affairs of the written constitution for a tribe not within the purview of the Indian Reorganization Act will serve to document formal recognition of the tribal government and the tribal officials selected in accordance with the constitution.

There is no statute which requires that tribal constitutions adopted by tribes which rejected the Indian Reorganization Act be approved by the Secretary of the Interior or by the Commissioner of Indian Affairs. However, approval by either of those officials is formal evidence that such a document is recognized by the Department and that all employees of the Department are to recognize it as the instrument governing the affairs of the particular tribe. Such approval also serves to enable the tribal members to distinguish that constitution from others which may be adopted and circulated by minority segments of the tribe.

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Tribes within the purview of the Indian Reorganization Act may avail themselves of the special provisions of Section 16 of that act by adopting a written constitution in accordance with the procedure prescribed by it. (See Illustration No. 1, Sec. 16) The principal effects of this section upon written constitutions adopted pursuant to its provisions are the participation of the Secretary of the Interior in the adoption of the constitution and the modification of his regulatory relationships to the tribe. Recognized Indian tribes and bands in Oklahoma, except the Osage, may adopt written constitutions under the Oklahoma Welfare Act of June 26, 1936 (49 Stat. 1967). (Illustration No. 3) The natives of Alaska may adopt written constitutions under the Alaska Reorganization Act of May 1, 1936 (49 Stat. 1250). (Illustration No. 2)

B. Drafting Constitutions and Bylaws. While the following suggestive material treats with the drafting of constitutions in some detail, Bureau officials working with tribes to develop written constitutions should bear in mind the importance of tailoring written constitutions to the needs and situations of each tribe. Such officials should counsel with the interested tribes to adapt the suggestive material offered to suit the particular case. Assistance in drafting written constitutions and bylaws is available from the Central Office Branch of Tribal Programs.

(1) Procedure. The drafting of a tribal constitution should be the concern of every member of the tribe. When there is a prior existing tribal council, that council may act as a constitutional committee, or it may appoint a committee to draft a constitution for the tribe. Alternatively, the governing body may by ordinance provide for the tribal members to elect special delegates to draft a proposed constitution in constitutional convention.

(a) Tribal officials and Bureau employees working with them should try to bring about the widest possible participation in the discussions of subject matter to be included in the constitution and bylaws. It is important that no Indian

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on the reservation should feel excluded from the effort of preparing a constitution under which he is to live.

- (b) In discussing the proposed constitution, first thought should be given to the fundamental needs of the Indians; when this has been generally defined, thought should be given to the kind of organization that will best meet those needs.
 - (c) Studying the government of neighboring towns and counties, as well as types of business, welfare, and social organizations in these neighboring areas, should provide ideas. However, unthinking imitations of other organizations, Indian or non-Indian, should be avoided.
- (2) Required Provisions. Certain provisions should be included in every constitution to identify the organizing group, state the reasons for organizing, delineate the area over which authority will be exercised, indicate the persons to be included in the organization, and provide the manner of adopting, amending, and revoking the instrument. On certain of these points the Indian Reorganization Act provides general conditions to be observed, and tribes organizing in accordance with that act should be informed of them. It is also desirable in drafting the constitution and bylaws to consider the Departmental policies reflected in the administration of the Indian Reorganization Act.
- (a) Name of Organization. The choice of an organizational name by an Indian group is entirely within the discretion of the group concerned. Ordinarily, an Indian tribe, pueblo, band, or colony should continue to use its traditional name, particularly when legislation has been enacted for a group under a specific name.
 - (b) Statement of Purpose. While a written constitution usually contains a preamble stating the purpose to be served by the government organized, the

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inclusion of such a statement is entirely discretionary. However, such a statement, if included, should contain no purposes inconsistent with law. The preamble should clearly set forth to the Indians concerned and to their elected representatives the general purposes for which they are organizing.

- (c) Territory. Every constitution should contain a clear description of the territory to which it is to apply. Such a statement should be drafted on the basis of relevant treaties, acts of Congress, and Executive Orders establishing the reservation boundaries. The statement may include the added phrase "and such other territory as may be hereafter added thereto."
- (d) Membership. It is important that membership be open to all who maintain tribal relations and to those children of members who, although they may be nonresident for economic reasons, nevertheless would otherwise be entitled to membership. Membership is one of the determinants of jurisdiction for the tribal government. Tribal tradition in this respect should be considered. Consideration should also be given to the changing circumstances which may cause a migration of families to areas of greater employment opportunities, as well as guides indicated in the Indian Affairs Manual section dealing with membership enrollment. (83 IAM, Chapter 8)
- (1) Basic Roll. Constitutional provisions on membership should begin with a statement of what roll is to be taken as defining the present membership of the tribe. Such a roll may be either an allotment or a census roll, or an annuity roll. If any such roll is thought to contain errors, it will be well to include some such phrase as "provided that within five years from the adoption and approval of this constitution and bylaws

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corrections may be made in said roll by the governing body, subject to the approval of the Secretary of the Interior or his authorized representative."

- (2) Future Members. The membership article should indicate what children born in the future will be entitled to tribal membership.
- (3) Adoptions. The manner of adopting individuals into membership and the eligibility of persons for such adoption, are important points to consider, if the tribe is to provide for adoptive membership.
- (4) Loss of Membership. Whether membership should be terminated and under what conditions and procedures should be considered. It should be understood that dropping an individual Indian from tribal rolls does not interfere with any vested individual rights, such as title to allotted land. It may deprive the individual of benefits arising in the future to the tribal membership (e.g. the right to vote and the right to hold office and the right to tribal dividends derived from tribal enterprises, if approved by the Secretary of the Interior).
- (e) Organization of Governing Body. The manner in which the governing body of the tribe is to be organized and the titles to be given to this body and to its officers are entirely within the discretion of the Indians concerned. However, the constitution should specify the principal officers, and it should indicate clearly the basis of representation.
 - (1) If such representation is by districts it is suggested that the boundaries of such districts be defined.

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- (2) The constitution should clearly indicate the terms of all elective officers and the time of all elections. In the event that a system of staggered terms, such as that of the United States Senate, is adopted there should be a clear statement indicating which of the members first elected shall serve the longer terms and which shall serve the shorter terms.
 - (3) The constitution should specify clearly who is to call the first election, whether, for example, it is to be an existing tribal council or a special election committee or the Secretary of the Interior.
 - (4) It should designate the time within which such election is to be held and the kind of notice that is to be given and indicate who is to supervise the holding of the election.
 - (5) Definite provision should be made for authorizing the appointment of non-elective officers and members of special boards or committees for the various tasks the tribe may wish to undertake, e.g., members of land board, credit board, board of elections, board of public works, etc.
- (f) District or Community Organization. On the larger reservations where it is not likely that all members of the tribe will have identical interests and problems and be able to act together on immediately local issues, careful consideration should be given to the formation of subordinate districts or local community units of tribal government. Particularly is this important where communities, villages, districts or other similar units have practiced some degree of local autonomy in local affairs.

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- (1) Such districts or communities should be based on realistic social groupings of the Indians concerned. Where such groupings do not correspond with existing administrative district lines these lines should not be paramount. Some constitutions authorize the governing body to redistrict as the needs develop; however, it may be well to provide safeguards to prevent gerrymandering.
- (2) Consideration should also be given to the powers that should vest in the local districts and to the relationship that should exist between the local districts and the tribal government as a whole.
- (3) Enumerated Powers. The enumeration of powers to be exercised by a tribal government and the extent to which such powers will be subject to review by the Department of the Interior must vary from reservation to reservation in accordance with the desires and experience of the Indians concerned and in the light of special laws and treaties affecting the rights of the tribe and its members. Following is a list of the major powers which may legally be exercised by Indian tribes, either because they are powers expressly granted to organized Indian tribes by the Indian Reorganization Act (or other statutes) or because they are ordinary powers of local self-government which have never been withdrawn from the tribes. It should be clearly understood that these powers are to be exercised in conformity with the statutes and the Constitution of the United States, and when applicable, State laws.
 - (a) Negotiations with Government Agencies. The power to represent the tribe in negotiations with any governmental agency is one of the powers which the Indian Reorganization Act indicates such constitutions should confer either upon a tribal council or some other representative body of the tribe. The purpose of this provision is to centralize responsibility for tribal affairs and to prevent any

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unauthorized body from claiming authority of the tribe to transact business of any sort with any governmental agency.

- (b) Employment of Legal Counsel. A second power which should be included in every constitution is the power "to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior." It should be understood that counsel may be employed in connection with tribal activities requiring general legal services, in the prosecution of tribal claims, and in individual affairs of tribal members when so authorized by the tribe and approved by the Commissioner. Ordinarily the tribes do not finance legal assistance on private matters. (83 IAM Chapter 7)
- (c) Veto Power Over Disposition of Tribal Assets. A third and most important power which was conferred by the Indian Reorganization Act, is the power "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe."
- (1) Where beforehand tribal lands have been leased, easements have been granted, and tribal funds have been expended without the consent of the tribe, the Indian Reorganization Act forbids these practices with respect to those tribes to which the provisions of the act apply. (83 IAM 9)
- (2) The power to veto includes by implication the power to approve and the tribal governing body may approve any disposition of tribal property in conformity with existing laws. For example, tribal lands may not be leased for periods in excess of those provided by law, nor may tribal lands or interest in lands be sold except under express law.

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- (d) Advice on Appropriation Estimates. The Indian Reorganization Act expressly provides that with respect to each tribe organized under its provisions, "The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress." The constitution should embody this right to be advised.
- (e) Control over Tribal Property and Tribal Enterprises. Under existing law recognized tribal officials are authorized to speak for the tribe in leasing or granting permits upon tribal lands, in making exchanges of tribal lands and in assigning to individual members of the tribe rights of use and occupancy in tribal lands. Tribal constitutions should contain a broad provision authorizing the governing body or other tribal agency to manage tribal land and other property in conformity with Federal law, and to manage any tribal enterprises in accordance with the terms of a charter issued to the tribe or an agreement approved by the Secretary of the Interior. More detailed provisions of management and control may then be embodied in ordinances which may be changed without the necessity of a constitutional or charter amendment.
- (f) Appropriation of Tribal Funds. The funds which may be expended by a tribe are those which it may raise on its own initiative through taxation, privileges, and service fees, contributions, or profits of tribal enterprises, or which Congress may specifically make available to the tribe.
- (1) The constitution should specify that the governing body is to have discretion in the appropriation of available local funds, or whether appropriation measures should be submitted to popular referendum or to the Department for review, or both. (See 83 IAM 9)

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- (2) Some tribes have found it convenient to distinguish between "local tribal funds" collected by the tribal governing body through taxation or contributions or otherwise subject to disposal without Departmental approval, on the one hand, and, on the other hand, "tribal trust funds" which may be expended only through supervisory action of Congress or the Secretary of the Interior. (See 83 IAM 9)
- (g) Taxation and Levying Fees. The power to tax and levy fees may be exercised as to nonmembers of the tribe as well as to members, but where nonmembers trading with the tribe or enjoying any privileges granted by the tribe are made subject to fees, taxing and fee levying ordinances affecting such persons are subject to review by the Secretary of the Interior. The Department is vested by law with certain responsibilities with regard to Indian traders.
- (h) Requisition of Labor for Public Purposes. Unless it is practicable for a tribe to raise adequate funds to pay for all public enterprises, it may be advisable to include in the tribal enterprises constitutional authorization to require community labor for public purposes, where this practice is consistent with tribal customs.
- (i) Exclusion of Trespassers from Reservation. The power to exclude nonmembers from a reservation, if included in a constitution, should be qualified by requiring Departmental approval of any ordinance on this subject. The power to exclude nonmembers of a tribe from the jurisdiction of the tribe should be qualified, in the case of an open reservation, by restricting such power to exclusion from restricted Indian lands. No such limitation is needed for an unallotted reservation.

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- (j) Law and Order. The power to enact ordinances is empty unless the tribe can enforce its ordinances through judicial processes. The constitution should provide for such judicial processes. Whether this judicial machinery should deal with ordinary misdemeanors will depend upon the jurisdiction of the Federal and State courts within the territory of the tribe. Offenses committed on reservation land and involving only Indians are not subject to the jurisdiction of State courts without specific legislation.
- (k) Eminent Domain. Where the organized tribe contemplates public projects which may require the acquisition of private land, rights-of-way, or other property, the constitution should contain clear authorization for condemnation of property of members of the tribe in courts of competent jurisdiction. Ordinarily the tribe does not petition for condemnation, such petitions to the Department of Justice have been executed by the Secretary of the Interior, or his authorized representative, on behalf of the tribe, but in the name of the United States.
- (l) Regulation of Commerce and Use of Property. General authority to regulate the use and disposition of property, if granted to the governing body, should be qualified by the requirement that ordinances affecting nonmembers should be submitted for Departmental approval. The ordinary regulatory power of local government may be exercised over partnerships and associations of tribal members as well as individual members, operating on the reservation. Some tribal constitutions adopted under the Indian Reorganization Act include special reference to the power to regulate subordinate organizations, and also include special mention of the power to charter associations for economic purposes.
- (m) Control of Inheritance. While the inheritance of allotted lands is by act of Congress made subject to State laws, the inheritance of personal property

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or interests in tribal land other than allotments, remains subject to the jurisdiction of the tribe.

- (n) Regulation of Domestic Relations. The power of tribes to maintain regulations governing marriage and divorce has been recognized by Federal and State courts. If a tribe desires to assume responsibility in this field, its ordinances need not be subject to Departmental approval.
- (o) Appointment of Guardians. It is recommended that the power to appoint guardians by the governing body of an Indian tribe be qualified by the requirement that ordinances on this subject be subject to review by the Secretary of the Interior.
- (p) Membership. Authority to enact ordinances on such matters as the manner of adoption and loss of membership, the definition of residence, and the determination of blood quantum should be included in the list of enumerated tribal powers. It may also be listed either in the article on membership, or elsewhere in the constitution.
- (q) Public Welfare. The promotion of public health and education, the encouragement of Indian handicrafts, the administration of charity, the conservation of natural resources, and generally, the advancement of the public welfare may properly be included among the enumerated powers of the council.
- (r) Control of Elections. It is advisable to include in any constitution a general authorization to enact ordinances or resolutions governing the details of nominating and electing officers. Even though the constitution and bylaws contain general provisions on this subject, some related matters may require future action to accommodate changing needs. The authority of the governing body to take such action should be clear. In addition to the appointment of election boards, approval of the ballot, eligibility

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candidates, polling places, absentee balloting procedures, selection of officials, dates, notices, the ordinance should also provide procedures for settling disputes, recounts, challenges, registration of protests and such other pertinent provisions as may protect the voting privileges of the tribal members.

- (s) Regulation of Procedure of Tribal Government. Many matters will arise in the conduct of tribal affairs that will require regulations by the governing body. Each constitution should contain general authority to regulate the procedure of the governing body itself and subordinate tribal agencies and tribal officials. It may also be desirable to include in this statement express authority to appoint and remove subordinate tribal officials.
- (t) Delegation of Powers. A general constitutional principle is that powers involving the exercise of discretion should not be delegated by a law-making body to any other body or official unless such delegation is authorized by the constitution which establishes such bodies. Tribal constitutions should provide expressly for the governing body to delegate any of the foregoing powers to subordinate boards, committees, or officials, to district or community units of tribal government, and to cooperative associations under tribal government control which are open to all members of the tribe, reserving the right in the governing body to review any action taken by virtue of such delegated power.
- (4) Acceptance of Future Grants of Power. As the organized Indian tribes acquire experience in self-government, they should assume larger responsibilities in managing their own affairs and seek additional grants of power. The necessity of amending the constitution to provide for such added powers may be avoided if, following the list of powers, a provision is included authorizing the governing body of the tribe to exercise any further

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powers that may in the future be delegated to the council. Such powers may be delegated by the Secretary of the Interior, in matters falling within his jurisdiction, or by other officials or agencies of Government.

- (5) Reserved Powers. The omission of any powers now vested in the tribe under existing law from the listing of enumerated tribal powers might be construed as permanently depriving the governing body of such powers. In order to avoid this, it is well to include in the constitution a specific statement that any powers previously vested in the tribe, but not expressly conferred upon the governing body by the constitution, shall not be abridged but shall be reserved to the members of the tribe and may be exercised through appropriate bylaws or constitutional amendments.
- (6) Manner of Review. Wherever Departmental approval or review of tribal action is required by law or by the terms of the tribal constitution, provision should be made for the submission of tribal resolutions or ordinances to the Secretary of the Interior. The following procedure has been generally adopted: Tribal ordinances or resolutions which are subject to Departmental review are submitted to the Superintendent. If he approves, they become effective, unless rescinded by the Secretary of the Interior within 90 days after their enactment. If he disapproves, the tribal council may appeal to the Secretary. The Secretary may overrule the decision of the Superintendent at the request of the tribe. (See 83 IAM 6.6B)
- (7) Executive Responsibility. Tribal constitutions generally have left the administration and execution of tribal ordinances and resolutions to the governing bodies or such subordinate committees or officials as the governing body may appoint. Tribes whose affairs are many and complex may well consider the advisability of providing for separate legislative and executive powers. Tribal constitutions may properly confer upon

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the executive head of the tribal government considerable responsibility for the enforcement and administration of all tribal ordinances and resolutions, including the power to issue rules pursuant to such ordinances and resolutions. Such separation of powers should make possible a strong centralized government which otherwise cannot effectively operate if all decisions, important or trivial, are left to the governing body.

(8) Place of Judiciary. Most tribes have made the judicial arm of the tribal government strictly responsible to the council. This is a simple plan which secures centralized responsibility and may be more suited to the needs of tribal governments than an independent judiciary with power to declare council ordinances unconstitutional. The constitution should specify whether judicial officers are to be appointed or elected to office.

(9) Conduct of Elections and Nominations.

(a) Right to Vote. The constitution should clearly specify qualifications required for the right of voting in tribal elections.

(1) For tribes within the provisions of the Indian Reorganization Act, the statement of qualifications should conform with Sections 16 and 19 of the act, which provide that the members of a tribe over the age of 21 may vote in elections to adopt or amend the constitution or charter. In all other elections the tribes may prescribe the customary minimum voting age.

(2) The constitution may provide for a reasonable residence requirement, or absentee balloting procedures, or both, to be prescribed even for voting on amendments when the constitution is adopted under the Indian Reorganization Act. In the case of a charter granted under Section 17 of the Indian Reorganization Act, only resident voters are eligible to participate and appropriate provisions in the charters should be included.

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- (3) With respect to elections, e.g., elections for office and referendum or recall elections, the tribe may prescribe such age, residence, or other voting qualifications as it deems proper. Tribal governing bodies should consider that eligible absentee members have a right to participate in the benefits of tribal resources and serious consideration should be given to permit their participation in all elections affecting the management or disposition of tribal resources.
- (b) Time and Place of Voting. The constitution should specify the time and place of elections or empower the governing body to fix such time and place by ordinance. It is usual to require that notice of elections should be given in sufficient advance of the election date to afford all candidates a fair opportunity to present their candidacy to the people.
- (c) Manner of Voting. Unless tribal traditions or special circumstances require otherwise, it should be recommended that voting in all popular elections be by secret ballot. Provisions should also be made for absentee balloting by members absent from the reservation.
- (d) Nominations. The constitution should empower the governing body of the tribe to enact ordinances or resolutions governing nomination procedures. Alternatively, the constitution should prescribe a definite procedure for making nominations to tribal office, requiring such nominations to be made on or before a certain date, specifying whether the nomination is to be made by one person or by a larger number of members (as by petition), and indicating the duties of the secretary of the governing body or other officials in making the nominations public.

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(10) Vacancies and Removal from Office.

- (a) Forfeiture of Office. Many tribal constitutions have provided that a member of the tribal governing body shall automatically forfeit his office when he is absent from a certain number of council meetings without acceptable excuse or if convicted of certain offenses. In some constitutions it has been provided that automatic forfeiture of office will follow from conviction of a felony or of a misdemeanor involving dishonesty or moral turpitude.
- (b) Impeachment. Substantial reasons other than those above given may warrant removal from office through impeachment proceedings. In specifying the procedure to be followed in such proceedings, the tribal constitution should provide for adequate notice to the accused of the charges against him and for a fair hearing upon such charges. Ordinarily only elected officials are liable to impeachment, appointive officials being subject to removal by a simple majority vote of the same body that appointed them.
- (c) Popular Recall. Any provision for popular recall of elective officials should specify the type of notice or petition required to set the recall procedure in operation. It should specify further whether the incumbent officer shall remain in his position in the interim between the filing of the petition and the conclusion of the recall election. It should specify that the election on the question of recall will be held preceding any proposed election of another person to fill the same office. The constitution should also specify whether the incumbent official may be a candidate for re-election.

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(d) Vacancies. Each constitution should specify how vacancies in elective offices are to be filled. Ordinarily the filling of vacancies can be done by interim appointment by the governing body of the tribe although the office was originally filled by popular vote of the whole tribe. However, individual districts or communities should vote or appoint to fill a vacancy if the office was originally filled by election within these local units.

(11) Popular Participation in Government.

- (a) Means of Informing Tribes of Official Acts. The members of the tribe, to participate in their tribal government effectively and intelligently must be informed currently of tribal affairs. On a small reservation this purpose may be served by encouraging tribal members to attend council meetings. On a larger reservation, where such attendance is difficult, the constitution may require district representatives to render regular reports to their constituents concerning the activities and future plans of the tribal governing body. The posting of tribal resolutions and ordinances in public places may be useful in creating an enlightened public opinion concerning tribal affairs. Where finances permit, it may be possible to publish ordinances, resolutions and minutes of council meetings for public distribution.
- (b) Initiative and Referendum. Initiative and referendum serve two important purposes. In the first place, they give the people of the tribe a degree of security against oppressive tribal legislation. In the second place, the initiative and referendum should help intensify popular interest, discussion and criticism of tribal affairs and policies by giving the members of the tribe a direct voice in these fields. Constitutional provisions on this subject may be of three types:

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- (1) A provision permitting a group of individuals on the reservation to require a referendum vote on any ordinance already enacted by the governing body of the tribe.
 - (2) A provision allowing the calling of such an election either upon an ordinance already enacted or upon one proposed but not yet voted upon by the council.
 - (3) A provision making it mandatory that the tribal council submit certain matters to popular referendum even without the circulation of a petition.
- (c) Popular Participation in Committees. Attention should be given to the advisability of enlisting the widest possible active support and participation of members of the tribe in the administration of tribal affairs. This may be accomplished in part by appointing to special committees or boards those members of the tribe who have constructive criticism and suggestions to make concerning tribal affairs and by delegating to such boards authority and responsibility for the performance of special tasks.
- (12) Bill of Rights. Certain tribes have included in their constitutions provisions designed to protect individual members and tribal minorities against oppression by the tribal government. Guarantees of individual rights have been included under four headings:
- (a) Right of suffrage,
 - (b) The right to participate in tribal resources and enterprises,
 - (c) Civil liberties, e.g., freedom of worship, conscience, speech, press, assemblage, petition and association, and,
 - (d) Rights of accused.

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- (13) Adoption of Constitution and Bylaws. Each constitution should contain, as its final provision, a statement of the conditions under which it is to become effective. This statement should be drafted in the terms of Section 16 of the Indian Reorganization Act by those tribes within the purview of that act.

6.9 Tribal Bylaws. The written provisions of tribal government prescribing procedures and regulations for the internal operations of the governing body and subordinate tribal offices can be set forth in bylaws. Such bylaws may be a part of the constitution or, in the case of tribes incorporated under the Indian Reorganization Act, the tribal charter of incorporation. The substance of such bylaws to be considered are suggested below and these suggestions are not to be considered preclusive of others:

A. Duties of Officers.

- (1) President, Chairman, or Governor. The duties of the principal officer of the tribe may be defined narrowly as those of a presiding officer in the governing body of the tribe, or broadly as the duties of the chief executive officer of the tribe, charged with general responsibility for the administration of tribal ordinances and resolutions.
- (2) Vice-Chairman, Vice-President, or Lieutenant Governor. The position of vice-chairman, vice-president, or lieutenant governor is set up in some, but not all, of the tribal constitutions thus far adopted. The need of the particular tribe should be determinative.
- (3) Secretary. In specifying the duties of the secretary, it should be recommended that this officer be specifically required among his other duties to furnish copies of the minutes of all meetings to the Commissioner of Indian Affairs and to retain copies of such minutes for inspection at all times by members of the tribe. This officer is normally responsible for officially recording the business of the governing body, official record maintenance, correspondence, issuing public notices, and similar requirements which may be included in the constitution and bylaws or charter.

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- (4) Treasurer. The duties of the treasurer should be carefully defined so as to secure an orderly administration of tribal finances. The treasurer should be required to furnish a bond satisfactory both to the council and to the Commissioner of Indian Affairs. (See 83 IAM 9)
 - (5) Other Appointive Officers. General provision may be made for the appointment and removal of additional officers, boards, or committees, the duties of which should be clearly defined by ordinance of the council.
- B. Qualifications of Office. The bylaws should include a clear statement of the qualifications for elective offices, e.g., age and residence requirements, and excluding persons who have been convicted of offenses of specified types, etc.
- C. Installation of Officers. The bylaws may properly include a brief statement showing how the election of officers is to be certified and when such officers are to assume office. They may or may not include a prescribed oath of office.
- D. Salaries. The bylaws may specify how official salaries are to be fixed and may include maximum figures beyond which salaries may not be paid. Tribal funds on deposit in the Treasury of the United States may be used for salaries only when appropriations therefor have been made by Congress. Tribal funds held in the treasury of the tribe may be used by the tribe for salaries without special act of Congress. (83 IAM 9)
- E. Meetings and Procedure.
- (1) Date and Place of Regular Meetings. The bylaws should specify when meetings are to be held and should either specify the place of such meetings or provide for the fixing of such place, from time to time, by the governing body. In fixing the frequency of meetings, careful consideration should be given to the specific tasks to be performed by the governing body. If costs or other considerations make the holding of regular monthly meetings impractical, a special executive committee with power to act on behalf of the council

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during its absence may be desired. Ordinarily tribes have found that a rigid requirement of meetings, place, etc., are restrictive and more flexibility is obtained by granting constitutional authority to the governing body to regulate such matters by resolution or ordinance.

- (2) Special Meetings. Provision should be made for the calling of special meetings, either by the presiding officer of the governing body or by a certain number of members of the governing body or a certain number of members of the tribe. The procedure to be followed in filing notice of such meetings and the number of days' or hours' notice to be given should be specifically provided for.
- (3) Quorum. The bylaws of any tribe should include a definite statement as to the number of tribal councilmen necessary to constitute a quorum.
- (4) Rules of Order. Some tribes may wish to include specific rules of order, or statements on the order of business to be followed. However, it may be advisable to omit any definite provisions on this subject from the constitution and bylaws and allow the governing body to determine matters of this sort by ordinance in the light of their experienced need. If executive sessions are authorized it is desirable to provide that substantive actions taken in executive sessions be publicized to tribal members. It may also be desirable to provide that votes of councilmen be either by acclamation or by roll call, so that the people of the tribe may know how their representatives vote on specific issues.
- (5) General Tribal Meetings. If general councils or tribal meetings are authorized, the bylaws should specify when and where they are to be held, what powers are to be exercised, and what is to constitute a quorum, and what record should be made of decisions reached at such meetings.

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- (6) Ordinances and Resolutions. Where reference is made in the constitution itself to ordinances and resolutions and where the distinction between the two is likely to cause confusion, it may be desirable to include in the bylaws an explanation of this distinction. (See 83 IAM 6.6B) It is desirable, when feasible, to require that tribal ordinances and resolutions be published for the tribal membership.
- (7) Legislative Forms. To secure the validity of tribal enactments, it may be well to provide that all ordinances and resolutions begin with standard prescribed headings, or be distinguished by a tribal seal, or other means.
- (8) Minutes and Records. It may be desirable to include in the bylaws some provision for the preservation and inspection of the minutes and records of the deliberations and enactments of the tribal governing body.

6.10 Incorporation of Tribal Organizations. Indian tribes have been acknowledged to have "corporate status" for various purposes. (See Handbook of Federal Indian Law, p. 277). However, the subject of incorporation of tribal organizations is treated here in terms of their incorporation by written charters issued under express Federal and State laws of incorporation. Such a charter is an instrument of delegation of specific authority from the Federal or State government and vests responsibility concurrent with the authority delegated.

Incorporation of a tribal organization by charter from a State government is governed by the State's corporation laws. The specific provisions of the State's corporation laws should be analyzed to ascertain whether they offer significant advantages for the operation of the particular tribal organization. State governments issue both municipal and business charters of incorporation. (The Pueblo tribes of New Mexico have been recognized as being incorporated by virtue of an early act of the Territorial government of New Mexico which was extended by the organic act of the State of New Mexico. (Handbook of Federal Indian Law, p. 399-400) The nature of their corporate status is not entirely clear, although they have been classified under the

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category of a "municipal corporation." (See Op. Sol. ID-M. 29566, August 9, 1939). The Red Lake Fishery, a tribal business organization of the Red Lake Chippewas, is also incorporated under State laws of Minnesota.)

State chartered tribal organizations, however, in the absence of special Federal enabling legislation must be limited in their operations by complying with regulations of the Secretary of the Interior insofar as their operations involve trust property.

Incorporation of a tribal organization by charter from the Federal Government is governed by the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the Oklahoma Welfare Act of June 26, 1936 (49 Stat. 1967), or the Alaska Reorganization Act of May 1, 1936 (49 Stat. 1250). (See Illustrations 1, 2 and 3) The pertinent provisions of these acts should be analyzed to ascertain whether they offer significant advantages for the operations of the particular tribal organization. Only those tribes that come within the purview of these acts may receive the charters for which the acts provide. The charters issued by the Federal Government pursuant to those acts may be either of municipal or business character.

The following subsections offer suggestions to be considered in those cases where incorporation under the special Federal law is determined to be realistically advantageous and needed within the tribe's particular situation:

A. Purpose and Form.

- (1) General. The chief purpose of incorporation is to provide modern methods of conducting business and utilizing resources. It is necessary, therefore, that the charter of incorporation set forth clearly the objectives of the tribe and the nature of the corporate structure.
- (2) Basis of Incorporation. Each corporate charter should contain a statement of the two facts which must be shown in order to authorize the submission of a charter to a vote of the Indians concerned.

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- (a) That the tribe is organized under a constitution and bylaws ratified and approved pursuant to Section 16 of the act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378).
 - (b) That more than one-third of the adult members of the tribe have petitioned that a charter of incorporation be granted to such tribe.
- (3) Duration of Corporation. Ordinarily a tribal corporation has perpetual succession. This should be clearly specified in the charter.
- (4) Management. Each charter should clearly specify the manner in which the various powers included in the corporate charter are to be exercised.
- (a) Many tribes have placed this management responsibility in the tribal governing body. Since this body is political in nature and is subject to frequent displacement by the electorate, continuity of control over tribal enterprises is often unsatisfactory. The tribe should carefully consider the use of corporate Board of Directors as a management device. Such a proposition would permit a clear-cut delineation of competitive profit seeking business operation from those activities which are largely municipal or governmental in nature included in the constitution and bylaws.
 - (b) The tribe might consider the feasibility of engaging skilled and experienced personnel in the field of business and industrial management, by contract or otherwise. The corporate governing body should be authorized to delegate freedom of action to such personnel, retaining, however, the right to review decisions.

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B. Corporate Powers.

- (1) General. The powers which may be conveyed by a charter, in the discretion of the tribe and of the Secretary of the Interior, are set forth in Section 17 of the Indian Reorganization Act. Not all the powers enumerated in Section 17 are new powers. The tribes previously possessed, for example, the power to lease land, with the approval of the Secretary of the Interior (act of February 28, 1891, 26 Stat. 795; act of August 15, 1894, 28 Stat. 305), to manage and dispose of chattels belonging to the tribe, to purchase real and personal property, if funds were available, or to take property by gift or bequest.
- (2) Acquired Powers. The chief additional powers which a tribe may exercise through a charter are:
 - (a) Contracts. The general power to make contracts binding upon the tribe for the future.
 - (b) Leases. The power to lease tribal land or to grant permits for the use of tribal land for certain purposes without Departmental approval. This, of course, does not mean that the corporation may lease in excess of the 10 year limitation contained in Section 17 of the Indian Reorganization Act. (e.g. Section 6 of the Indian Reorganization Act (Illustration No. 1) requires all leases, permits and timber sale contracts to conform to Secretarial regulation of community grazing and timber lands, and even though a tribe chartered under the Indian Reorganization Act may, as authorized in its charter, vote to terminate the requirement of Secretarial approval of leases on tribal lands, the tribe cannot override the trust responsibility of the Secretary of the Interior of trust land. It is apparent that special enabling legislation will be required before Indian tribes can assume those certain authorities and responsibilities which impinge upon the basic Federal trusteeship.)

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- (c) Control Over Income. The power to receive money due under any leases or contracts which the tribe may make, except timber sales contracts, and also money received as profit from any tribal enterprises, and to spend such income for the benefit of the tribe or to distribute such income per capita among the members of the tribe. Timber sale contracts by the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), as amended, are required to be deposited in the United States Treasury.
 - (d) To Sue and Be Sued. The power to sue for the protection of its rights, and to be sued, if the tribe infringes upon the rights of its members or of any outsiders. (See Handbook of Federal Indian Law, p. 283).
 - (e) Corporate Status. The power to carry on business as a corporation.
 - (f) To Borrow Money. The right to borrow money from the revolving fund set up under Section 10 of the Indian Reorganization Act, or from other sources, and to use money so borrowed for tribal enterprises or for loans to corporative associations and individual members of the tribe.
- C. Nature of Corporate Property. It is well to include in any corporate charter a statement explaining that corporate property is identical with tribal property and entirely distinct from individual property. Individual property owned by members of the tribe may not be made subject to corporate debts or liabilities. The tribe is not relieved of any existing debts or liens by incorporating, but these debts or liens (for instance reimbursable charges on tribal land) remain valid against the incorporated tribe until they are paid.
- D. Corporate Accounts. Tribal constitutions should contain provisions requiring that accounts of the financial affairs of the tribe shall be kept and shall be open to inspection by the members of the tribe, that the treasurer of the

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tribe shall be bonded, and that certain regular procedures shall be followed in all disbursements of money. If adequate provisions on these points are not included in the constitution or bylaws of a tribe, the deficiencies may be corrected in the corporate charter. (83 IAM 9)

E. Manner of Amendment. Since Section 17 of the Indian Reorganization Act is silent as to the manner in which charters may be amended and since the power of amendment is one of the powers incidental to the conduct of corporate business, the method of amendment should be defined in each corporate charter.

- (1) The procedure for amending the charter should be similar to that required for the original adoption of the charter. This means that a majority vote of the adult resident members of the tribe at an election in which 30 percent of the eligible voters vote will be required for an amendment of the charter.
- (2) Any proposed amendments to the charter should be approved by the Secretary of the Interior before submission to a vote of the resident members.

F. Manner of Ratification. Each tribal charter should contain a clause specifying when the charter is to be effective. Section 17 of the Indian Reorganization Act specifies "that such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation." When a charter has been ratified by tribal vote, it is not necessary to resubmit the charter to the Secretary of the Interior, as may be required in the case of tribal constitutions and bylaws. Since the Secretary is given the responsibility of issuing the charter in the first place, his responsibility is completed when the charter is submitted to the vote of the Indians, and the charter becomes effective as soon as the Indians have ratified it.

G. Enumeration of Powers.

- (1) Acquisition and Ownership of Property. Under a corporate charter, a tribe may acquire and hold property, real and personal, in its own name.

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- (a) This does not mean that title to tribal lands or tribal funds held by the United States will be turned over to a tribe upon incorporation. Special legislation would be required to effect that result.
 - (b) Under contracts which the tribe may make after it is incorporated, grazing rentals, timber fees, or any other income or property received through the medium of such contracts, except timber sale contracts, may be taken directly into the tribal treasury.
 - (c) Likewise the tribe may, in its own name, purchase land from its own members or from other sources, or may purchase any of the products or materials that may be needed for the operation of tribal enterprises, e.g., cattle, lumber, commodities, or building materials.
 - (d) Each corporate charter should include a statement of the statutory power: "To purchase, take by gift, bequest, or otherwise, own, hold * * * property of every description, real and personal."
- (2) Management and Operation of Property. Section 17 of the Indian Reorganization Act specifies the power to "manage, operate, * * * property of every description, real and personal."
- (a) Under this statutory power the incorporated tribe may utilize the lands and resources that belong to the tribe (not including lands or other property of individual members) for the general benefit of the tribe.
 - (b) It may engage in any of the activities for the development of tribal resources that have hitherto been carried on by Indian Service officials or by private lessees and traders.

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- (c) It may go into the business of mining, lumbering, cattle raising, or retail trade, or any other lawful business, utilizing tribal land and resources.
 - (d) This power of management is subject to certain limitations for the protection of tribal resources.
- (3) Disposition of Property. A third power cited in Section 17 of the Indian Reorganization Act is the power to "dispose of property of every description, real and personal."
- (a) This means that the tribe may spend the income which it received, may grant leases or permits for the use of tribal land, and may sell property of the tribe.
 - (b) Specific statutory limitations forbid the sale of land within the reservation or the leasing of such land for a period in excess of the statutory limit.
- (4) Exchange of Corporate Interests for Allotted Lands. Section 17 of the Indian Reorganization Act expressly declares that the powers above discussed shall be construed to include the power "to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property." Under this power an Indian tribe may purchase allotted lands or interests in deceased allotments whether owned by members of the tribe or by nonmembers of the tribe. Where a tribe does not have sufficient funds, the statute provides that instead of paying cash for restricted lands purchased from members, the tribe may grant in exchange interests in corporate property. Several types of such corporate interests may be distinguished, as follows:
- (a) The tribe may assign a specific tract of tribal land for the use of the individual who transfers his land to the tribe. This is referred to in many tribal constitutions as an "exchange assignment."

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- (b) The member of a tribe transferring restricted lands or heirship interests to his tribe may receive in exchange a proportionate interest in some larger tract of tribal land. An Indian might transfer a one-half interest in a 160-acre allotment of grazing land and a one thirty-second interest in a 640-acre allotment and receive in exchange a share in a tribal grazing unit equivalent to 100 acres in the case specified. It would not, however, refer to any specific hundred acres within the unit. The member could either run his own stock on the tribal range or receive the value of a permit covering that carrying capacity.
- (c) The member may receive in exchange for lands or interests in land transferred to the tribe the right to graze a certain number of head of cattle on tribal land for a specified period of time. Such an assignment, like the assignment of a "roving" acreage, falls within the "exchange assignments" provisions of many tribal constitutions. The kind of arrangement provided for in (a) and (b) may be useful in consolidating heirship lands under tribal ownership. The individual Indian transferring his inherited interests or allotment to the tribe in exchange for an interest in a grazing unit, or a permit to run a specified number of livestock should derive more income than he could receive from the leasing of his scattered holdings. The tribe benefits by having an increased tribal area.
- (d) A fourth type of corporate interest that might be granted in exchange for transfer of restricted lands to the tribe would be in the form of a corporate bond. A bond is a promise to pay money over a period of years, secured in some way. The security might be a pledge of certain income, or a mortgage on chattels belonging to the tribe. As an alternative to this form of

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security, the individual transferring his land to the tribe might include a provision in the deed to the effect that the land or part of it should revert back to him in the event of a default in the purchase price.

- (e) Any other form of corporate interest that may be worked out, in addition to those listed above, would be included in the power "to issue interests in corporate property in exchange for restricted Indian lands."
- (5) The Borrowing of Money. In addition to the corporate powers specifically mentioned in Section 17, that section also authorized the inclusion in a corporate charter of "such further powers as may be incidental to the conduct of corporate business, not inconsistent with law." One of these further powers is the power to borrow money. With respect to loans from the Indian Credit Fund, the regulations of the Interior Department specify the conditions on which loans may be made to Indian tribes. Borrowing need not be limited to the Indian Credit Fund, however. If the tribe desires to authorize borrowing from other governmental agencies, from members of the tribe, or from other sources, limitations should be included to prevent plunging the tribe into excessive debt.
- (6) Corporate Seal. Another power incidental to the conduct of corporate business is the power "to adopt, use, and alter at its pleasure a corporate seal." The corporate seal is used to validate official documents of the corporation.
- (7) Making and Performing of Contracts. A further power necessary to the conduct of corporate business is the power "to make and perform contracts and agreements." This statement of power should be accompanied by prudent qualifications designed to prevent the tribe from incurring unwise or excessive financial obligations.
- (8) Pledges and Assignments. A tribal corporation must be prepared to offer security for the faithful performance of its contractual obligations. If the tribe borrows

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money from a governmental agency or from a private person, the agency or person is likely to insist upon some arrangement whereby he may protect himself in case the tribe fails to meet its obligations. The Indian Reorganization Act forbids the grant of any liens on tribal land by way of security. It is, therefore, necessary to rely on other forms of security that will be fair to the tribe and to those from whom it wishes to borrow money. Two types of security are suggested: (1) A pledge of chattels and (2) an assignment of future tribal income. Whether the security is a pledge of chattels or an assignment of future income, it cannot be touched unless the tribe defaults in its primary obligations.

- (9) Deposit of Corporate Funds. Under previous practices, most tribal funds have been held in the United States Treasury, subject in some cases to appropriation by Congress and in other cases to expenditure in the discretion of the Secretary of the Interior. When the tribe is given authority to enter into business as a corporation and to acquire, own, manage, and dispose of property of every description, which includes money, the tribe will necessarily handle sums of money and the charter should specify how these funds are to be deposited.
- (10) Legal Suits. One of the powers incidental to the conduct of corporate business is the power to bring suit against other parties. It follows that if the tribe is to have the right to bring suit, it must in turn submit to suit when it violates its agreements or injures its own members or other individuals.
- (11) Corporate Dividends. A further power incidental to the conduct of corporate business is the power to distribute business profits. The income which the tribe may secure through the use of tribal resources should be devoted in the first place to paying debts which the tribe may incur in the conduct of its enterprises.

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Any remaining profit may be devoted to public purposes of the tribe or may be distributed per capita among the members of the incorporated tribe.

- (12) Further Incidental Powers. In order to make certain that any further incidental powers not expressly mentioned in the list of corporate powers shall not be denied to the incorporated tribe, language reserving the right to exercise them should be included.

H. Limitations on Corporate Powers. The Indian Reorganization Act imposes certain limitations on tribal organizations chartered under its authority. These limitations should be considered in the charter, along with experience the tribe and its members have had in business affairs, the character of the interests with which the incorporated tribes may have to deal, and the possibilities of unwise or harmful exploitation of the resources of the reservation. Limitations to be considered are as follows:

- (1) Sale of Land. Under the Indian Reorganization Act, an incorporated tribe may not sell or mortgage any tribal land, or interest in land, included within the limits of the reservation unless otherwise provided by law. Each charter should specify this restriction.
- (2) Management of Tribal Property. The power to manage and operate tribal property is subject to limitations imposed by Section 6 of the Indian Reorganization Act:

"The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosions, to assure full utilization of the range, and like purposes."

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- (3) Leasing of Land. Section 17 of the Indian Reorganization Act limits the power "to dispose of property." Tribal lands within the limits of the reservation may not be leased for a period exceeding ten years, which is the period provided by law at the time the Indian Reorganization Act was adopted. Additional limitations on the leasing of land could be considered, such as:
- (a) Prior review by the Secretary of the Interior or Commissioner of Indian Affairs, or their authorized representatives, of individual leases or ordinances and resolutions setting out tribal leasing practices.
 - (b) Fixing maximums in terms of acreage, value or time within which the tribal corporation may transact lease agreements without prior review.
- (4) Borrowing of Money. The power to borrow money always involves the risk that the corporate officers may overburden the future income of the tribe by borrowing large sums of money. A suitable limitation on the borrowing of money to consider is the fixing of a maximum indebtedness which the corporate officers may contract.
- (5) Making of Contracts. The power to make contracts other than for the disposition of tribal property covers three large fields.
- (a) The tribe may make ordinary commercial contracts in connection with tribal enterprises, contracts, for instance, under which the tribe purchases breeding stock or sells beef cattle, acquires equipment, or other personal or real property.
 - (b) The tribe may enter into contracts with governmental agencies of the United States or of the State or county, whereby such agencies agree to offer the members of the tribe certain governmental services in exchange for a money payment or for some equivalent in service.

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- (c) The tribe may contract for the employment of tribal employees, and for other expenses of government, such as construction of a council house, a community gymnasium or swimming pool, or a water filter plant. Limitations on contracting should be written into the charter appropriate to the experience and capacity of the corporate officers. These limitations could be in the form of:
- (1) Requiring prior review or approval by the Secretary of the Interior or the Commissioner of Indian Affairs.
 - (2) Specify a maximum in terms of dollar value involved in the contract.
 - (3) Specifying type of contracts which may be executed without further approval.
- (6) Pledging or Assigning Chattels or Future Income. Limitation on the pledging or assigning of chattels or future income to consider writing into the charter are:
- (a) Fixing the duration of time in advance for which future tribal income may be pledged.
 - (b) Stipulating that the amount of such pledges should never exceed a fair proportion, say one-half, of the tribal income, or that the pledge or assignment should cover not more than one-half interest in any note, contract, or other source of future income.
 - (c) Include a requirement of temporary Secretarial approval for all such pledges or assignments.
- (7) Depositing Tribal Funds. In order to protect the funds of the incorporated tribe, some provision should be included in the corporate charter, safeguarding the deposit of such funds. A suitable limitation to

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consider in the requirement of depositing the funds in a depository insured by the Federal Deposit Insurance Corporation.

- (8) Distribution of Dividends. Each corporate charter should set forth suitable conditions under which dividends can be distributed. Some conditions to consider are:
- (a) Dividends shall be paid only out of profits or net income.
 - (b) Tribal capital assets shall not be liquidated to provide for dividend distribution.
 - (c) Adequate provision shall be made to retire corporate debts before making dividend distributions.
 - (d) Require approval by the Secretary of the Interior or Commissioner of Indian Affairs of all dividend payments in excess of a fixed maximum in terms either of:
 - (1) a proportion of the annual net income of the corporation.
 - (2) a proportion of the accrued surplus of corporation.

6.11 Delegation of Tribal Authority to Subordinate Organizations.

- A. Tribes Under Indian Reorganization Act. Specific provision is contained in most tribal constitutions under the Indian Reorganization Act authorizing the governing body to charter subordinate organizations, to appoint committees, boards, and tribal agents, and to delegate to such organizations or officials of the tribe any of its enumerated powers, reserving the right to review actions taken by virtue of such delegations. The charters of these tribes, in addition, usually contain authority to exercise further incidental powers, not inconsistent with law, as may be required in the conduct of corporate business.

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- B. Tribes Not Under Indian Reorganization Act. Other tribes, too, may delegate authority to subordinate organizations and officials. They may not, however, issue charters to subordinate organizations under the authority provided in the Indian Reorganization Act. Any delegation whether by a tribe under the Indian Reorganization Act or not, should be accomplished by formal resolution or other action of the governing body specifying the duties to be delegated, the conditions under which the delegation must be performed, and like terms. If the delegation of function is for the purpose of creating a business enterprise, it may be advisable for the governing body to draft complete bylaws, with the assistance of those members of the tribe who are to participate in the enterprise. In some cases, it may be desirable for such an enterprise to apply for incorporation under State law.

THE INDIAN REORGANIZATION ACT
(Public - NO. - 383 - 73d CONGRESS)
(48 Stat. 984)
(S. 3645)
AN ACT

To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

SECTION 2. The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.

SECTION 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: Provided further, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation: Provided further, That the order of the Department of the Interior signed, dated, and approved by Honorable Ray Lyman Wilbur, as Secretary of the Interior, on October 28, 1932, temporarily withdrawing lands of the Papago Indian Reservation in Arizona from all forms of mineral entry or claim under the public land mining laws, is hereby revoked and rescinded, and the lands of the said Papago Indian Reservation are hereby restored to exploration and location, under the existing mining laws of the United States, in accordance with the express terms and provisions declared and set forth in the Executive orders establishing said Papago Indian Reservation: Provided further, That damages shall be paid to the Papago Tribe for loss of any improvements on any land located for

mining in such a sum as may be determined by the Secretary of the Interior, but not to exceed the cost of said improvements: Provided further, That a yearly rental not to exceed five cents per acre shall be paid to the Papago Tribe for loss of the use or occupancy of any land withdrawn by the requirements of mining operations, and payments derived from the damages or rentals shall be deposited in the Treasury of the United States to the credit of the Papago Tribe: Provided further, That in the event any person or persons, partnership, corporation, or association, desires a mineral patent, according to the mining laws of the United States, he or they shall first deposit in the Treasury of the United States to the credit of the Papago Tribe the sum of \$1.00 per acre in lieu of annual rental, as hereinbefore provided, to compensate for the loss or occupancy of the lands withdrawn by the requirements of mining operations: Provided further, That patentee shall also pay into the Treasury of the United States to the credit of the Papago Tribe damages for the loss of improvements not heretofore paid in such a sum as may be determined by the Secretary of the Interior, but not to exceed the cost thereof; the payment of \$1.00 per acre for surface use to be refunded to patentee in the event that patent is not acquired.

Nothing herein contained shall restrict the granting or use of permits for easement or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes; and nothing contained herein, except as expressly provided, shall be construed as authority for the Secretary of the Interior, or any other person, to issue or promulgate a rule or regulation in conflict with the Executive order of February 1, 1917, creating the Papago Indian Reservation in Arizona or the Act of February 21, 1931 (46 Stat. 1202).

SECTION 4. Except as herein provided, no sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: Provided, however, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs of such member: Provided further, That the Secretary

of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

SECTION 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in land, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed \$2,000,000 in any one fiscal year: Provided, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H.R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H.R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

SECTION 6. The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

SECTION 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: Provided, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

SECTION 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

SECTION 9. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed \$250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

SECTION 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

SECTION 11. There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed \$250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: Provided, That not more than \$50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

SECTION 12. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the

Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

SECTION 13. The provisions of this Act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16, shall apply to the Territory of Alaska: Provided, That Sections 2, 4, 7, 16, 17, and 18 of this Act shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomie, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act shall not apply to the Indians of the Klamath Reservation in Oregon.

SECTION 14. The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of this Act, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat. L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment at the time of the passage of this Act would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

SECTION 15. Nothing in this Act shall be construed to impair or prejudice any claim, or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SECTION 16. Any Indian tribe or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

SECTION 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: Provided, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

SECTION 18. This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly

called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

SECTION 19.^a The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty one years.

Approved, June 18, 1934.

(PUBLIC--NO. 147--74th CONGRESS)
(H.R. 7781)

AN ACT

To define the election procedure under the Act of June 18, 1934, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any election heretofore or hereafter held under the Act of June 18, 1934 (48 Stat. 984), on the question of excluding a reservation from the application of the said Act or on the question of adopting a constitution and bylaws or amendments thereto or on the question of ratifying a charter, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate such exclusion, adoption, or ratification, as the case may be: Provided, however, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote.

SECTION 2. The time for holding elections on the question of excluding a reservation from the application of said Act of June 18, 1934, is hereby extended to June 18, 1936.

SECTION 3. If the period of trust or of restriction on any Indian land has not, before the passage of this Act, been extended to a date subsequent to December 31, 1936, and if the reservation containing such lands has voted or shall vote to exclude itself from the application of the Act of June 18, 1934, the periods of trust or the restrictions on alienation of such lands are hereby extended to December 31, 1936.

SECTION 4. All laws, general and special, and all treaty provisions affecting any Indian reservation which has voted or may vote to exclude itself from the application of the Act of June 18, 1934 (48 Stat. 984), shall be deemed to have been continuously effective as to such reservation, notwithstanding the passage of said Act of June 18, 1934. Nothing in the Act of June 18, 1934, shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe, where such tribe voted not to exclude itself from the application of said Act.

Approved, June 15, 1935 (49 Stat. 378).

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THE ALASKA REORGANIZATION ACT
(PUBLIC--NO. 538--74th CONGRESS)
(H.R. 9866)

AN ACT

To extend certain provisions of the Act approved June 18, 1934, commonly known as the Wheeler-Howard Act (Public Law Numbered 383, Seventy-third Congress, 48 Stat. 984), to the Territory of Alaska, to provide for the designation of Indian reservations in Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1, 5, 7, 8, 15, 17, and 19 of the Act entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes," approved June 18, 1934 (48 Stat. 984), shall hereafter apply to the Territory of Alaska: Provided, That groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common band of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984).

SEC. 2. That the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26), or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101), or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: Provided, That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: Provided, however, That in each instance the total vote

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cast shall not be less than 30 per centum of those entitled to vote: Provided further, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

Approved, May 1, 1936.

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THE OKLAHOMA INDIAN WELFARE ACT

(PUBLIC - NO. 816 - 74th CONGRESS)
(S. 2047)
AN ACT

To promote the general welfare of the Indians of the State of Oklahoma,
and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, in his discretion, to acquire by purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing Indian reservations, including trust or otherwise restricted lands now in Indian ownership: Provided, That such lands shall be agricultural and grazing lands of good character and quality in proportion to the respective needs of the particular Indian or Indians for whom such purchases are made. Title to all lands so acquired shall be taken in the name of the United States, in trust for the tribe, band, group, or individual Indian for whose benefit such land is so acquired, and while the title thereto is held by the United States said lands shall be free from any and all taxes, save that the State of Oklahoma is authorized to levy and collect a gross-production tax, not in excess of the rate applied to production from lands in private ownership, upon all oil and gas produced from said lands, which said tax the Secretary of the Interior is hereby authorized and directed to cause to be paid.

SECTION 2. Whenever any restricted Indian land or interests in land, other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of this or any other Act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor.

SECTION 3. Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as

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the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: Provided, however, That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934 (48 Stat. 984): Provided, That the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter.

SECTION 4. Any ten or more Indians, as determined by the official tribal rolls or Indian descendants of such enrolled members, or Indians as defined in the Act of June 18, 1934 (48 Stat. 984), who reside within the State of Oklahoma in convenient proximity to each other may receive from the Secretary of the Interior a charter as a local cooperative association for any one or more of the following purposes: Credit administration, production, marketing, consumers' protection, or land management. The provisions of this Act, the regulations of the Secretary of the Interior, and the charters of the cooperative associations issued pursuant thereto shall govern such cooperative associations: Provided, That in those matters not covered by said Act, regulations, or charters, the laws of the State of Oklahoma, if applicable, shall govern. In any stock or nonstock cooperative association no one member shall have more than one vote, and membership therein shall be open to all Indians residing within the prescribed district.

SECTION 5. The charters of any cooperative association organized pursuant to this Act shall not be amended or revoked by the Secretary except after a majority vote of the membership. Such cooperative associations may sue and be sued in any court of the State of Oklahoma or of the United States having jurisdiction of the cause of action but a certified copy of all papers filed in any action against a cooperative association in a court of Oklahoma shall be served upon the Secretary of the Interior, or upon an employee duly authorized by him to receive such service. Within thirty days after such service or within such extended time as the trial court may permit, the Secretary of the Interior may intervene in such action or may remove such action to the United States district court to be held in

the district where such petition is pending by filing in such action in the State court a petition for such removal, together with the certified copy of the papers served upon the Secretary. It shall then be the duty of the State court to accept such petition and to proceed no further in such action. The said copy shall be entered in the said district court within thirty days after the filing of the petition for removal, and the said district court is hereby given jurisdiction to hear and determine said action.

SECTION 6. The Secretary is authorized to make loans to individual Indians and to associations or corporate groups organized pursuant to this Act. For the making of such loans and for expenses of the cooperative associations organized pursuant to this Act, there shall be appropriated, out of the Treasury of the United States, the sum of \$2,000,000.

SECTION 7. All funds appropriated under the several grants of authority contained in the Act of June 18, 1934 (48 Stat. 984), are hereby made available for use under the provisions of this Act, and Oklahoma Indians shall be accorded and allocated a fair and just share of any and all funds hereafter appropriated under the authorization herein set forth: Provided, That any royalties, bonuses, or other revenues derived from mineral deposits underlying lands purchased in Oklahoma under the authority granted by this Act, or by the Act of June 18, 1934, shall be deposited in the Treasury of the United States, and such revenues are hereby made available for expenditure by the Secretary of the Interior for the acquisition of lands and for loans to Indians in Oklahoma as authorized by this Act and by the Act of June 18, 1934 (48 Stat. 984).

SECTION 8. This Act shall not relate to or affect Osage County, Oklahoma.

SECTION 9. The Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this Act. All Acts or part of Acts inconsistent herewith are hereby repealed.

Approved, June 26, 1936.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D. C.

June 11, 1957

Memorandum

To: Superintendents, Area Directors and Central Office
Personnel

From: Commissioner, Bureau of Indian Affairs

Subject: Transmitting Tribal Enactments

For some months there has been a tendency both in the field and in the Central Office to defer action on tribal ordinances and resolutions requiring Departmental review within 90 days from the date of their enactment. I understand fully, I believe, the pressure of the work load at each level of operation. However, certain work must be done on time otherwise the whole machinery shall collapse. Often, unless tribal ordinances and resolutions receive prompt attention, the tribal government cannot function.

As you know, the Secretary of the Interior has delegated to the Commissioner, Bureau of Indian Affairs, authority to act for him when favorably reviewing or when approving tribal ordinances and resolutions which, by the terms of the constitution adopted or charter issued under the Indian Reorganization Act, the Oklahoma Indian Welfare Act or the Alaska Act, are subject to Secretarial review or approval. The authority to rescind or disapprove any such ordinances or resolutions has been retained in the Secretary. Consequently, any resolution or ordinance which it is determined should be rescinded must be transmitted to the Secretary of the Interior in sufficient time to permit the Secretary to take such action within 90 days from the date of its passage by the tribal governing body.

The Office of the Secretary has requested that it be allowed at least 30 days to give administrative and legal review to tribal enactments which it is recommended be rescinded. Therefore, it is incumbent upon the field and the Central Office staffs to

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analyze all tribal ordinances and resolutions and to determine by consulting the tribal constitutions and charters which enactments are subject to Secretarial review. Secretarial review provisions are not to be confused with those constitutional provisions which provide for Secretarial approval. No time limit is involved on tribal enactments requiring approval by the Secretary.

Most constitutions require that ordinances and resolutions requiring Secretarial review must be approved or disapproved by the Superintendent within 10 days after their enactment (some constitutions state a longer period). If the Superintendent approves the enactments within the specified period they become effective on the date of his approval, subject to the rescission by the Secretary of the Interior within 90 days from the date of their enactment. Those ordinances and resolutions which, by the terms of the tribal constitution, require Secretarial review shall be submitted to the Central Office in triplicate, each with a separate letter of transmittal, in accordance with the following time schedule:

1. The Superintendent shall transmit the enactment to the Area Director immediately upon his approval, which shall be within 10 or 15 days, depending on the constitutional requirements, after the enactment by the council.

2. The Area Director shall examine the enactment and transmit it with his remarks and recommendations within 15 days after receipt by him.

3. The branch in the Central Office which has the responsibility for administering the activity which is the subject of the tribal enactment requiring Secretarial review shall prepare the necessary correspondence sufficiently in advance to permit the enactment, if rescission is recommended, to reach the Secretary's office at least 30 days prior to the deadline date.

(signed)
Glenn L. Emmons
Commissioner

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

September 10, 1940

M. 30976

M. 30977

MEMORANDUM for the First Assistant Secretary.

This is with reference to your memorandum of January 8 and the memorandum of the Director of Personnel, dated December 21, 1939, both of which present legal problems regarding dual employment within the Indian Service. In view of the fact that these memoranda present similar problems based on reports from the field offices of the Indian Service concerning various employees who receive compensation in addition to their regular salaries, it seems expedient to group the cases and analyze them in a single memorandum. The applicable statutes which may be involved are sections 62 and 66 of Title 5 of the U. S. Code, sections 68 and 87 of Title 25 of the U. S. Code and the Hatch Act (act of August 2, 1939, Pub. No. 252, 76th Cong., as amended).

Section 66 of Title 5, U. S. Code provides:

"No Government official or employee shall receive any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality, and no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States.* * *"

The following employees are reported as receiving, besides the compensation by reason of their employment in the Indian Service, additional compensation which apparently is for work having no connection with their services as Government officials or employees. Therefore, they may legally receive and retain such additional compensation without violating section 66.

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Travis E. Andrews, field dentist,
Schurz, Nevada, who receives veteran's compensation;

Wilfred F. McGillis, employed in the warehouse for Indian supplies,
St. Louis, Missouri, who is a member of the National Guard;

John T. Montgomery, supervisor of extension work,
Phoenix, Arizona, who received remuneration for article
written outside of scope of regular duties;

Emmett G. McLemore and
Lyman Vann, employed at the Sequoyah Orphan Training School,
Tahlequah, Oklahoma, who are members of the National Guard;

Four unnamed employees at Chilocco Indian Agricultural School,
Chilocco, Oklahoma, who are members of the National Guard;

The employees described in the letter of W. S. Hanna, Super-
vising Engineer, Billings, Montana, as doing extra work
for other Government Agencies.

Two persons, Mrs. Frances W. Rogers, Crow Agency, Montana, and
Miss Mildred Helming, Ft. Belknap Agency, Harlem, Montana, are
receiving payments from the State for certifying births and deaths.
In the Solicitor's memorandum of October 14, 1939 (M. 30432), it was
held that there is no legal prohibition against an employee retaining
such payments for work connected with the handling of vital statistics.

Some of the cases involve employees of the Indian Service who
also receive payments from the tribe for services on the Tribal Council
or otherwise. Of course, if such payments are for services rendered
which are entirely unconnected with the official duties of the em-
ployees and do not necessitate neglect of such official duties, there
is no violation of section 66, *supra*. In the Solicitor's memorandum
of April 6 to the Commissioner of Indian Affairs, a copy of which is
attached, it was pointed out that the holding by Federal employees
of elective offices in tribal governments seems to be a violation
of the Hatch Act (act of August 2, 1939, Pub. No. 252, 76th Cong.).

The amendments to the Hatch Act adopted July 19, 1940 (Pub. No. 753,
76th Cong.), apparently modify the conclusion of the memorandum of
April 6. Section 18 of the amending act provides:

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"Nothing in the second sentence of section 9 (a) or in the second sentence of section 12 (a) of this Act shall be construed to prevent or prohibit any person subject to the provisions of this Act from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party."

Accordingly, it would seem that Federal employees may engage in political activity and hold elective offices in tribal governments in connection with elections where only local matters are involved and the candidates do not represent national parties. The following persons, therefore, may legally continue to hold offices in their tribal governments:

Jarrett Blythe, Cherokee, North Carolina;

Three members of the Colorado River Council,
employed at the Colorado River Agency,
Parker, Arizona, mentioned in the letter of A. F. Ladd;

A number of employees, members of the Confederated Salish,
and Kootenai Tribal Council, employed at the Flathead
Indian Agency, Dixon, Montana, mentioned in the letter
of L. W. Shotwell.

I find that the employees named below are doing work which seem to be in violation of sections 68 and 87 of Title 25 of the U. S. Code, prohibiting persons employed in Indian affairs from having any interest or concern in any trade or contracts with Indians, except on the account of the United States. The pertinent parts of these sections are as follows:

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"68. Employees not to trade with Indians - No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of \$5,000, and shall be removed from his office."

"87. Interest of agents and employees in Indian contracts - No agent or employee of the United States Government or any of the Departments thereof, while in the service of the Government, shall have any interest, directly or indirectly, contingent or absolute, near or remote, in any contract made, or under negotiation, with the Government or with the Indians, for the purchase for transportation or delivery of goods or supplies for the Indians * * *. The violation of any of the provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than \$500 nor more than \$5,000, and by removal from office; and, in addition thereto, the court shall, in its discretion, have the power to punish by imprisonment of not more than six months."

L. E. Correll, Superintendent of the Chilocco Indian Agricultural School, states:

"We have a clerk that figures the Club board bills, makes a record of the same, and keeps the accounts in balance. He receives \$3.00 a month for this work.

"We have another employee, a clerk, that helps keep the school activity funds in balance. He receives one per cent of the gross returns.

"Another employee has the responsibility of buying and acting as general manager for the school canteen, for which he received two and one-half per cent of the net earnings."

From this meager information I cannot tell whether the first two employees named are actually engaged in trade with the Indians. It seems probable that the third employee named, the one acting as manager for the school canteen, is engaged in some sort of trade with the Indians. The meaning of the word "trade" in section 68 of Title 25 should, in my opinion, be construed as meaning commerce in general since the purpose of the act has been stated as generally to prohibit "the use of official position and influence for the purpose

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of overreaching the Indians." Ewert v. Bluejacket, 259 U. S. 129. In United States v. Douglas, 190 Fed. 482, the history of legislation forbidding persons employed in Indian affairs to have any personal interest or concern with Indians is painstakingly traced. In that case the word "trade" is defined broadly as including commerce in its widest sense. The question of whether the abovementioned employees are acting in violation of the statute cannot be determined definitely without knowing in detail of what the extra work consists. In general all I can say is that any taking of money or objects of value from Indians in exchange for goods or services supplied by Indian Service employees is illegal unless it comes within the exception of sections 68A and 87A of Title 25 relating to native arts and handicraft.

The report of Robert Yellowtail, Crow Agency, Montana, states that Mrs. Frances Rogers, who has been previously mentioned in connection with the handling of vital statistics, also handles the books of the Bozeman Trail Ditch Company, which is represented as serving a considerable acreage of trust land. Her work includes the handling of collections and the preparation of checks and the payment of bills. I am of the opinion that this work is prohibited by sections 68 and 87 of Title 25.

Helen Hatchett of the Navajo Service, Window Rock, Arizona, states that:

"As Clerk in charge of the Mails and Files Department of Navajo Service, I wish to advise we also operate a Western Union telegraph printer. As a convenience to the employees, we also send and receive personal messages. When these telegrams are sent I charge them to my personal account and collect from sender.

"The Western Union has allowed me to deduct 20% from my bill when payment is made. This amounts to about five to six dollars monthly. This is divided among the clerks in the Mail and Files Department which amounts to perhaps two dollars each."

I am of the opinion that this work also is in violation of sections 68 and 87 of Title 25, since the clerks make a profit of 20 percent of the total amount received from the Indians in exchange for services in connection with sending the telegrams. However, it would be

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entirely proper to render such services if no profit were received by Federal employees, the 20 percent being paid back to the senders of the telegrams.

The report of P. L. Hallam, Superintendent of the Crow Creek Indian Agency, Ft. Thompson, South Dakota, states that two auto mechanics, Alfred Wells and Frank Thomas occasionally make repairs to cars after regular hours and that this has no connection with their official duties. Such work is entirely legal and not prohibited by any statute unless it is done for Indians and therefore in violation of sections 68 and 87 of Title 25.

Noble O. Guthrie and Nora Grissom, of the Hopi Agency, Keams Canyon, Arizona, act as postmaster and postmistress, respectively, at their stations. The holding of these positions in addition to their employments in the Indian Service is legal and not in violation of section 62 of Title 5, U. S. Code, * inasmuch as the salary of each is less than \$2500 per annum. It is not in violation of section 66 as the compensation is paid by the United States and the work is unconnected with the official duties of the employees for the Indian Service.

In the report submitted by L. W. Shotwell, Superintendent of the Flathead Indian Agency, Dixon, Montana, he states:

"In the matter of appraisals for right of ways across Indian lands by other than Government concerns or for business connected with such appraisals we have had authority to include in the damage estimate, expenses of the employee engaged in this work. This money is deposited to the credit of the United States Government and travel expense or other expense allowed to the employee on a voucher. It was considered as a reimbursement for part of the cost in assessing damages where the Government is

* "No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by laws; * * *"

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to special expense. In handling matters not of particular benefit to the Government or Indian Service we have required such reimbursements. It is not a payment directly to the employee but a reimbursement to the Government from the employee for doing such work."

Since such payments are not contributions to the employees for their services but payments direct to the United States for work done, apparently under authority, there is no conflict with section 66 of Title 5.

For the Solicitor,
(Sgd.) Leland O. Graham
Chief of Division

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Washington

ORDER NO. 1912

December 20, 1943

Subject: Employment in the Indian Service of Indians who serve as representatives of tribal governing bodies.

It is hereby ordered:

1. That no Indian who is employed in any regularly established position in the Indian Service within the jurisdiction of which his tribal body is a part shall hereafter serve as a representative of his tribe, band, or pueblo; except that this restriction shall not be construed to apply to Indians who are employed on an intermittent or irregular basis where such employment does not require decisions or actions which might be influenced by his official connection with the tribe, band, or pueblo. The term "representative" as used in this Order shall be construed to mean elective or other position in the official governing body of the tribe, band, or pueblo, or any position established by such governing body which carries with it the right to vote in the proceedings of that body.
2. That no Indian who is serving in any capacity as a representative of his tribe, band, or pueblo, shall be employed in any regularly established position in the Indian Service within the jurisdiction of which his tribal body is a part; except that this restriction shall not be construed to prevent the employment of such Indian for intermittent or irregular labor where such employment does not require decisions or actions which might be influenced by his official connection with the tribe, band, or pueblo.
3. Any Indian who is now employed by the Indian Service in any of the above capacities and who is also serving as a representative of his tribe, band, or pueblo, shall be required to relinquish one or the other of such positions at the expiration of his present term of office in the tribal council or other governing body. An Indian employee who desires to retain his position in the Indian Service shall be permitted to serve as tribal representative until the expiration of his present term.

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4. If after careful study of the application of the provisions of this Order to any tribe, band, or pueblo, the Commissioner of Indian Affairs concludes that it would be in the best interest of the Service to exclude it from the operations hereof, he may do so by suitable order.
5. Official notice through the Superintendent shall be given by the Indian employee of the termination of his services as a representative of the tribe. Superintendents in reporting on the membership of the governing body and its official committees shall indicate the character of Indian Service position, if any, held by such members.

(sgd) HAROLD L. ICKES
Secretary of the Interior

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83-3, 3-17-58

B I A M REISSUE
FEBRUARY 1984

7 ATTORNEY CONTRACTS WITH INDIAN TRIBES7.1 General

- A. Purpose. To give general information relating to contracts for general counsel, special services, and for the prosecution of claims against the United States.
- B. Scope. All attorney contracts with Indian tribes are required by statute to be approved by the Secretary or his duly authorized representative. (25 USCA, 70n, 81, 85, Illustrations 1 and 2, 25 USCA 473a, 476, 477, 503, Illustrations 1, 2 and 3, 83 IAM 6)
- C. Separate Contracts for Each Type of Service. Although the same counsel may be retained for all purposes, a separate contract should be executed and approved for each class of service. In order to expedite subsequent actions, each type of contract should be retained in a separate file.
- D. Negotiation of Contracts. Attorney contracts with tribes organized under the Indian Reorganization Act, Alaska Act and the Oklahoma Indian Welfare Act, shall be negotiated and executed in accordance with the requirements of those statutes and provisions of the applicable tribal constitution, bylaws and charter. (25 USCA 476, 477, 473a, 503. Illustrations 1, 2 and 3, 83 IAM 6)

Attorney contracts with tribes which do not have constitutions under the Indian Reorganization Act shall be negotiated and executed in accordance with the requirements of Title 25, USCA, Secs. 81 and 85. (Illustration 2)

Any member of a tribe having no recognized tribal organization, may enter into a contract in behalf of the tribe with an attorney for the prosecution of claims. Such contract must be executed in accordance with Section 2103 of the United States Revised Statutes. (25 USCA, Secs. 81, 85 and 70n. Illustrations 1 and 2)

- E. Selection of Attorneys. Selection of attorneys by tribes having written organizational documents shall be by the body authorized in the tribe's constitution and bylaws to negotiate contracts in behalf of tribe. An appropriate resolution shall be adopted by such body showing the name

ATTORNEY CONTRACTS WITH INDIAN TRIBES

of the contracting party (attorney) selected and the names of the tribal members authorized to execute the contract on behalf of the tribe. A copy of the resolution bearing the manual signatures of the tribal officials attesting to its adoption shall be attached to all copies of the contract.

Selection of attorneys by tribes having no formal organization and of tribes whose organizational documents do not delegate authority to the governing body to make such selection, shall be by general council. (25 CFR 71 and 72)

A general council for such purpose shall be called in accordance with the constitution or, in the absence of a procedure in the tribe's constitution, in accordance with customary tribal procedure. In the absence of these procedures, the Superintendent shall call a meeting of a general council.(25 CFR 72.8)

Such general council shall by resolution:

- (1) Designate the contracting party or attorney.
- (2) Designate and authorize a committee to act in behalf of the tribe in executing the contract or agreement.
- (3) The general council should include in the resolution:
 - (a) Name and address of contracting party or attorney.
 - (b) Duration or life of the contract or agreement.
 - (c) Compensation to be paid; how, when and by whom.
 - (d) Names of tribal representatives authorized to execute a contract or agreement in behalf of the tribe.
 - (e) Any special instructions or requirements deemed necessary.

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A copy of the resolution, bearing the manual signature of the presiding officer of the general council, attested to by the secretary of the general council, and certified by the Superintendent or other proper official, shall be attached to each copy of the contract.

- F. Execution of Contracts. Contracts with tribes having constitutions shall be executed under the authority contained in the provisions of the approved tribal constitution.

Contracts with all other tribes shall be executed in accordance with the provisions of applicable laws and regulations. (25 USCA 81, Illustration 2)

- G. Transmittal of Contracts. Contracts shall be submitted in quintuplicate. Two copies shall bear the manual signatures of all parties. If the contract is required to be executed before a judge of a court of record, the two copies bearing the written signatures of the parties shall also have affixed certificates bearing the written signature of the judge of the court of record and of the clerk of the court. The remaining three copies may bear typed signatures of the parties and the judge of a court of record and the clerk of the court.

All copies should be forwarded to the Superintendent for transmittal to the Commissioner of Indian Affairs through the Area Director, together with a report and recommendation by the Superintendent. The report should cover, among other things, the Superintendent's opinion of the need for said contract, the tribal funds available for payment of fees and expenses, and the effect of such payment upon other budgeted expenses of the tribe. The Area Director should add his comments and recommendations to the Superintendent's report when transmitting the contract to the Commissioner of Indian Affairs.

A contract providing payment of fees and expenses from tribal funds should be accompanied by a resolution adopted in accordance with the tribal constitution appropriating sufficient tribal funds for the payment of fees and expenses as provided by the contract.

ATTORNEY CONTRACTS WITH INDIAN TRIBES

When the compensation and expenses are to be paid from local funds, the amount of such funds held in the tribal treasury, not otherwise appropriated and available for payment of fees and expenses, shall be stated.

- H. Form of Contracts. A tribal council or representative body having authority or power to employ an attorney in behalf of a tribe may obtain a tentative form of contract from the Commissioner of Indian Affairs. The request should include a statement of the scope of the intended employment, whether as attorney for prosecution of claims, general counsel, or for some other particular case or purpose.
- I. Recognition. Failure of an attorney to qualify under the rules established by law and regulations regarding attorney recognition before the Interior Department is deemed sufficient cause for disapproval of any attorney contract. (43 CFR 1.1 to 1.7, Illustration 3)
- J. Review Factors. In considering an attorney contract submitted for approval, the following factors, among others, will be taken into consideration:
- (1) Whether the contract is prepared and submitted in accordance with existing law, regulations and tribal constitutions. (25 USCA 81, Illustration 2; 43 CFR 1.1 to 1.7, Illustration 3)
 - (2) The total number of claims and general counsel contracts held by the attorney, either directly or by assignment.
 - (3) The extent of the attorney's interest in the contracts.
 - (4) Past performance under contracts.
 - (5) Location of home office of attorney and size of staff.
 - (6) Whether tribe has funds available to pay attorney.

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(7) Whether services to be rendered under contract are commensurate with the compensation stated therein.

K. Appeals. An appeal by any interested party to the Secretary from a decision of the Commissioner of Indian Affairs may be filed within 60 days after notice of decision. The appeal should be filed with the Commissioner of Indian Affairs and must be accompanied by a brief, setting forth fully the arguments upon which the appeal is based. The notice of appeal, appellant's brief, and the complete record must be transmitted promptly by the Commissioner of Indian Affairs to the Secretary.

7.2 Contracts for General Counsel Services.

A. Separate Contract for General Counsel. A separate contract for general counsel services should be drawn up and approved in accordance with existing law and regulations. (25 USCA 81, Illustration 2; USCA 473a, 476, 477, Illustrations 2 and 3, 83 IAM 6)

B. Duties of Attorney. The contract should contain a full statement of the duties and may be stated in general terms if duties are not limited. It customarily includes general legal services of the character usually performed by general counsel, including necessary representation of the tribe before the Department of the Interior, Committees of Congress and courts and other governmental agencies or departments of both Federal and State governments having any duty or control over the affairs of the tribe, but it shall not include the prosecution of any claims against the United States. The statement shall also specify the performance of any duties specifically desired by the tribe, such as attendance at council meetings, and may provide for advance authorization by the tribe before undertaking a particular job.

C. Fees. The attorney's fee may be a definite sum payable annually, quarterly, or monthly, or it may be a fixed charge for each hour or day's service rendered. In the case of a definite sum, hourly or daily fee, its reasonableness in the light of the needs of the tribe and the tribe's ability to pay shall be considered. In the case

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of an hourly or daily fee, the contract shall (a) specify a maximum annual limitation on the fee and may provide that such limitation can be exceeded if a larger sum is first authorized by the tribe and approved by the Commissioner, and (b) require the submission of periodic bills for services rendered.

- D. Expenses. The contract may specify the types of expenses for which the attorney will be reimbursed, such as actual travel expenses or mileage allowance in lieu of actual travel expenses, actual subsistence expenses or per diem in lieu of subsistence, telephone and telegraph costs, costs of printing briefs or other documents required in connection with litigation, and cost of stenographic or clerical services not performed by the attorney's regular office staff during regular office hours.

The contract should prohibit reimbursement for general office overhead expenses, such as rent, light, heat, local telephone and postage.

The contract shall specify a maximum yearly limitation on the amount of expenses for which the attorney may be reimbursed, unless a larger sum is approved by the tribe and by the Commissioner of Indian Affairs.

- E. Payment of Fees and Expenses. The contract shall provide that the payment of all fees and expenses shall be made upon the submission of vouchers for approval by the Commissioner of Indian Affairs or his duly authorized representative. Vouchers for reimbursement of attorney expenses shall also be approved by the tribe. Such vouchers shall comply and be transmitted in accordance with the instructions contained in 42 IAM 6.6.11.
- F. Availability of Funds. The contract shall make the obligation of the tribe to pay fees and expenses subject to the availability of funds in the tribal treasury or from an appropriation of tribal funds by Congress.

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- G. Term of Contract. The contract shall be for a specific term of years, but should be limited to three years unless justifications are submitted.
- H. Termination. The contract shall contain a provision for its termination by the Commissioner of Indian Affairs for satisfactory cause with the consent of or at the request of the tribe upon 60 days written notice to the attorney. The contract may also provide for its termination by either party by giving 30 days written notice to the other party. The contract may not be terminated by resignation by the attorney but both parties may agree to terminate the contract and waive the time specified for giving notice as set forth in the contract.
- I. Contract Assignment. The terms of the contract shall prohibit any assignment of the attorney's obligations, rights, or fees under the contract, in whole or in part, or the employment or association of other attorneys without the prior approval of the tribe and the Commissioner of Indian Affairs.

An assignment by the attorney of a partial interest shall include statements showing the division of fees and the responsibility for furnishing the service required under the contract.

Unless the compensation retained by the attorney is commensurate with the duties retained by him, a special justification shall be submitted with the request for approval. (25 USCA 84, Illustration 2; 25 USCA 473a, 476, 477, Illustrations 2 and 3, 83 IAM 6).

- J. Reports. The contract shall provide for periodic reports, not less frequently than semi-annually, to the tribe and to the Commissioner of Indian Affairs, indicating the services performed under the contract. The services performed will be considered in connection with the need for the continuance of the contract at the fee prescribed in the contract or any increase. The report required by this subsection shall be in addition to that required by 25 USCA 82.

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ATTORNEY CONTRACTS WITH INDIAN TRIBES

K. Selection of Counsel from Nearby Areas. When choosing a general counsel, the tribe should seriously consider the selection of an attorney or firm from the general area if most of the legal work of the tribe arises out of local situations that must be dealt with locally in the first instance, and the Superintendent's report shall indicate the extent of such consideration. The choice of general counsel from outside the general area should be based upon the need for substantial legal services elsewhere, or other good reasons.

7.3 Contracts for the Prosecution of Claims Against the United States.

- A. Separate Contract for Claims. A contract to represent a tribe in claims matters should be drawn up and executed separate and apart from a contract the attorney may have for general counsel services.
- B. Duties of Attorney. The contract shall contain a clear and concise statement of the duties to be performed by the attorney, which shall include an investigation of claims identified either specifically or by reference to claims that may be prosecuted under the Indian Claims Commission Act or a special jurisdiction act, advice to the tribe regarding the results of the investigation, and the prosecution of the claims to a conclusion in the court of final resort.
- C. Fee - Contingent. The compensation or fee of the attorney shall be contingent upon a recovery for the tribe in an amount not to exceed 10 percent of the recovery to be fixed by the Indian Claims Commission or Court of Claims if the matter is litigated or by the Commissioner of Indian Affairs if the matter is settled without litigation. Since the Indian Claims Commission or Court of Claims is in a better position after conclusion of a case to determine the value of the services rendered by an attorney, fixed fees of a stated amount of 10 percent or less are not usually in the best interest of the tribe and any contract containing a provision for a fixed fee must be fully justified.

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- D. Expenses. In the absence of special justification approved by the Commissioner of Indian Affairs and made a part of the record, the reimbursement of attorney's expenses in connection with the investigation and prosecution of the claim shall be made payable from the recovery for the tribe, if any, and the amount of such expenses shall be subject to determination by the court, Commission or Commissioner of Indian Affairs as the case may be. Any agreement by the tribe to pay expenses regardless of the outcome of the litigation shall be specifically justified, shall be limited in amount, shall be subject to the availability of funds within a specified and limited time, and shall provide for the payment of expenses on the basis of proper vouchers submitted for approval by the tribe and the Commissioner of Indian Affairs or his authorized representative.
- E. Term. The contract shall be for a specified number of years not to exceed ten. The contract may provide for an extension at the request of the attorney by the Commissioner of Indian Affairs, after consultation with the tribe, for additional periods not exceeding two years each if the claim has not been prosecuted to a conclusion.
- F. Termination. The contract shall contain a provision for its termination by the Commissioner of Indian Affairs for satisfactory cause with the consent of or at the request of the tribe upon 60 days written notice to the attorney. The contract may not be terminated by resignation of the attorney but may be terminated by the Commissioner immediately if both parties waive the time specified for giving notice as set forth in the contract.
- G. Contract Assignment. The terms of the contract shall prohibit any assignment of the attorney's obligations, rights, or fees under the contract, in whole or in part, or the employment or association of other attorneys without the prior approval of the tribe and the Commissioner of Indian Affairs.

An assignment by the attorney of a partial interest shall include statements showing the division of fees and the responsibility for furnishing the service required under the contract.

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Unless the compensation retained by the attorney is commensurate with the duties retained by him, a special justification shall be submitted with the request for approval. (25 USCA 84, Illustration 2; 25 USCA 473a, 476, 477, Illustrations 2 and 3, 83 IAM 6). However, an assignment or association shall not be approved if there is reasonable cause for belief that it is in furtherance of a claim brokerage plan or practice.

- H. Reports. The contract shall provide for the submission of special reports when requested by the tribe or by the Commissioner of Indian Affairs and for the submission of periodic reports, not less frequently than semi-annually, to the tribe and to the Commissioner of Indian Affairs indicating the work done by the attorney under the contract and evaluating his progress in the investigation and prosecution of the claims. The initial report shall outline the claim and indicate the scope of investigation necessary and the progress made to date. Subsequent reports shall indicate plans for filing the petition within the statutory time limit and the progress made in assembling evidence and preparing for trial. Such a report need not disclose confidential information, evidence, or litigation strategy.

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(PUBLIC LAW 726 - 79TH CONGRESS)
(CHAPTER 959 - 2D SESSION)
(H. R. 4497)
(60 Stat. 1049)

AN ACT

To create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created and established an Indian Claims Commission, hereafter referred to as the Commission.

JURISDICTION

SEC. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska:

- (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President;
- (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit;
- (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity;
- (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and
- (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after the date of the approval of this Act shall be considered by the Commission.

All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and

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demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief for distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

MEMBERSHIP APPOINTMENT; OATH; SALARY

Sec. 3. (a) The Commission shall consist of a Chief Commissioner and two Associate Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall receive a salary of \$10,000 per year. At all times at least two members of the Commission shall be members of the bar of the Supreme Court of the United States in good standing: Provided further, That not more than two of the members shall be of the same political party. Each of them shall take an oath to support the Constitution of the United States and to discharge faithfully the duties of his office.

TERM OF OFFICE; VACANCIES; REMOVAL

(b) The Commissioners shall hold office during their good behavior until the dissolution of the Commission as hereinafter provided. Vacancies shall be filled in the same manner as the

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original appointments. Members of the Commission may be removed by the President for cause after notice and opportunity to be heard.

NOT TO ENGAGE IN OTHER VOCATIONS OR REPRESENT TRIBES

(c) No Commissioner shall engage in any other business vocation, or employment during his term of office nor shall he, during his term of office or for a period of two years thereafter, represent any Indian tribe, band, or group in any matter whatsoever, or have any financial interest in the outcome of any tribal claim. Any person violating the provisions of this subdivision shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

QUORUM

(d) Two members shall constitute a quorum, and the agreement of two members shall be necessary to any and all determinations for the transaction of the business of the Commission, and, if there be a quorum, no vacancy shall impair or affect the business of the Commission, or its determinations.

STAFF OF COMMISSION

Sec. 4. The Commission shall appoint a clerk and such other employees as shall be requisite to conduct the business of the Commission. All such employees shall take oath for the faithful discharge of their duties and shall be under the direction of the Commission in the performance thereof.

OFFICES

Sec. 5. The principal office of the Commission shall be in the District of Columbia.

EXPENSES OF COMMISSION

Sec. 6. All necessary expenses of the Commission shall be paid on the presentation of itemized vouchers therefor approved by the Chief Commissioner or other member or officer designated by the Commission.

TIME OF MEETINGS

Sec. 7. The time of the meetings of the Commission shall be prescribed by the Commission.

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RECORD

Sec. 8. A full written record shall be kept of all hearings and proceedings of the Commission and shall be open to public inspection.

CONTROL OF PROCEDURE

Sec. 9. The Commission shall have power to establish its own rules of procedure.

PRESENTATION OF CLAIM

Sec. 10. Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.

TRANSFER SUITS FROM COURT OF CLAIMS

Sec. 11. Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: Provided, That the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court of Claims has been or will be authorized: Provided further, That the Court of Claims in any suit pending before it at the time of the approval of this Act shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit.

LIMITATIONS

Sec. 12. The Commission shall receive claims for a period of five years after the date of the approval of this Act and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress.

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NOTICE AND INVESTIGATION

Sec. 13 (a) As soon as practicable the Commission shall send a written explanation of the provisions of this Act to the recognized head of each Indian tribe and band, and to any other identifiable groups of American Indians existing as distinct entities, residing within the territorial limits of the United States and Alaska, and to the superintendents of all Indian agencies, who shall promulgate the same, and shall request that a detailed statement of all claims be sent to the Commission, together with the names of aged or invalid Indians from whom depositions should be taken immediately and a summary of their proposed testimonies.

(b) The Commission shall establish an Investigation Division to investigate all claims referred to it by the Commission for the purpose of discovering the facts relating thereto. The Division shall make a complete and thorough search for all evidence affecting each claim, utilizing all documents and records in the possession of the Court of Claims and the several Government departments, and shall submit such evidence to the Commission. The Division shall make available to the Indians concerned and to any interested Federal agency any data in its possession relating to the rights and claims of any Indian.

CALLS UPON DEPARTMENTS FOR INFORMATION

S Sec. 14. The Commission shall have the power to call upon any of the departments of the Government for any information it may deem necessary, and shall have the use of all records, hearings, and reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business.

At any hearing held hereunder, any official letter, paper, document, map, or record in the possession of any officer or department, or court of the United States or committee of Congress (or a certified copy thereof), may be used in evidence insofar as relevant and material, including any deposition or other testimony of record in any suit or proceeding in any court of the United States to which an Indian or Indian tribe or group was a party, and the appropriate department of the Government of the United States shall give to the attorneys for all tribes or groups full and free access to such letters, papers, documents, maps, or records as may be useful to said attorneys in the preparation of any claim instituted

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hereunder, and shall afford facilities for the examination of the same and, upon written request by said attorneys, shall furnish certified copies thereof.

REPRESENTATION BY ATTORNEYS

Sec. 15. Each such tribe, band, or other identifiable group of Indians may retain to represent its interests in the presentation of claims before the Commission an attorney or attorneys at law, of its own selection, whose practice before the Commission shall be regulated by its adopted procedure. The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecution of the claim; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case. The attorney or attorneys for any such tribe, band, or group as shall have been organized pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C., sec. 476), shall be selected pursuant to the constitution and bylaws of such tribe, band, or group. The employment of attorneys for all other claimants shall be subject to the provisions of sections 2103 to 2106, inclusive, of the Revised Statutes (25 U.S.C., secs. 81, 82-84).

The Attorney General or his assistants shall represent the United States in all claims presented to the Commission, and shall have authority, with the approval of the Commission, to compromise any claim presented to the Commission. Any such compromise shall be submitted by the Commission to the Congress as a part of its report as provided in section 21 hereof in the same manner as final determinations of the Commission, and shall be subject to the provisions of section 22 hereof.

NO MEMBER OF CONGRESS TO PRACTICE BEFORE COMMISSION

Sec. 16. No Senator or Member of or Delegate to Congress shall, during his continuance in office, practice before the Commission.

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HEARING

Sec. 17. The Commission shall give reasonable notice to the interested parties and an opportunity for them to be heard and to present evidence before making any final determination upon any claim. Hearings may be held in any part of the United States or in the Territory of Alaska.

TESTIMONY

Sec. 18. Any member of the Commission or any employee of the Commission, designated in writing for the purpose by the Chief Commissioner, may administer oaths and examine witnesses. Any member of the Commission may require by subpoena (1) the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, correspondence, and other evidence, from any place in the United States or Alaska at any designated place of hearing; or (2) the taking of depositions before any designated individual competent to administer oaths under the laws of the United States or of any State or Territory. In the case of a deposition, the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall be subscribed by the deponent. In taking testimony, opportunity shall be given for cross-examination, under such regulations as the Commission may prescribe. Witnesses subpoenaed to testify or whose depositions are taken pursuant to this Act, and the officers or persons taking the same, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

FINAL DETERMINATION

Sec. 19. The final determination of the Commission shall be in writing, shall be filed with its clerk, and shall include (1) its findings of the facts upon which its conclusions are based; (2) a statement (a) whether there are any just grounds for relief of the claimant and, if so, the amount thereof; (b) whether there are any allowable offsets, counter-claims, or other deductions, and, if so, the amount thereof; and (3) a statement of its reasons for its findings and conclusions.

REVIEW BY COURT OF CLAIMS

Sec. 20. (a) In considering any claim the Commission at any time may certify to the Court of Claims any definite and distinct

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questions of law concerning which instructions are desired for the proper disposition of the claim; and thereupon the Court of Claims may give appropriate instructions on the questions certified and transmit the same to the Commission for its guidance in the further consideration of the claim.

(b) When the final determination of the Commission has been filed with the clerk of said Commission the clerk shall give notice of the filing of such determination to the parties to the proceeding in manner and form as directed by the Commission. At any time within three months from the date of the filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims, which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. On the said appeal the Court shall determine whether the findings of fact of the Commission are supported by substantial evidence, in which event they shall be conclusive, and also whether the conclusions of law, including any conclusions respecting "fair and honorable dealings", where applicable, stated by the Commission as a basis for its final determination, are valid and supported by the Commission's findings of fact. In making the foregoing determinations, the Court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error. The Court may at any time remand the cause to the Commission for such further proceedings as it may direct, not inconsistent with the foregoing provisions of this section. The Court shall promulgate such rules of practice as it may find necessary to carry out the foregoing provisions of this section.

(c) Determinations of questions of law by the Court of Claims under this section shall be subject to review by the Supreme Court of the United States in the manner prescribed by section 3 of the Act of February 13, 1925 (43 Stat. 939; 28 U.S.C., sec. 288), as amended.

REPORT OF COMMISSION TO CONGRESS

Sec. 21. In each claim, after the proceedings have been finally concluded, the Commission shall promptly submit its report to Congress.

The report to Congress shall contain (1) the final determination of the Commission; (2) a transcript of the proceedings or judgment upon review, if any, with the instructions of the Court of Claims;

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and (3) a statement of how each Commissioner voted upon the final determination of the claim.

EFFECT OF FINAL DETERMINATION OF COMMISSION

Sec. 22 (a) When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is hereby authorized to be appropriated such sums as are necessary to pay the final ~~determination~~ determination of the Commission.

The payment of any claim, after its determination in accordance with this Act, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.

(b) A final determination against a claimant made and reported in accordance with this Act shall forever bar any further claim or demand against the United States arising out of the matter involved in this controversy.

DISSOLUTION OF THE COMMISSION

Sec. 23. The existence of the Commission shall terminate at the end of ten years after the first meeting of the Commission or at such earlier time after the expiration of the five-year period of limitation set forth in section 12 hereof as the Commission shall have made its final report to Congress on all claims filed with it. Upon its dissolution the records of the Commission shall be delivered to the Archivist of the United States.

FUTURE INDIAN CLAIMS

Sec. 24. The jurisdiction of the Court of Claims is hereby extended to any claim against the United States accruing after the date of the approval of this Act in favor of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws, treaties of the United States, or Executive Orders of the President, or is one which otherwise would be cognizable in the Court of Claims if the claimant were not an Indian tribe, band, or group.

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In any suit brought under the jurisdiction conferred by this section the claimant shall be entitled to recover in the same manner, to the same extent, and subject to the same offsets, counterclaims, and demands, as in cases brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U.S.C., sec. 250), as amended: Provided, however, That nothing contained in this section shall be construed as altering the fiduciary or other relations between the United States and the several Indian tribes, band, or groups. (Sec. 24 was repealed by the Act of May 24, 1949 (63 Stat. 102), and is now incorporated as section 1505 of Title 28 U.S.C.)

EFFECT ON EXISTING LAWS

Sec. 25. All provisions of law inconsistent with this Act are hereby ~~repealed~~ to the extent of such inconsistency, except that existing provisions of law authorizing suits in the Court of Claims by particular tribes, bands, or groups of Indians and governing the conduct or determination of such suits shall continue to apply to any case heretofore or hereafter instituted thereunder save as provided by section 11 hereof as to the deduction of payments, offsets, counterclaims, and demands.

Sec. 26. If any provision of this Act, or the application thereof, is held invalid, the remainder of the Act, or other applications of such provisions, shall not be affected.

Approved August 13, 1946.

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Section 2103, Revised Statutes (25 U.S.C. 81)

"81. Contracts with Indian tribes or Indians. No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

"First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

"Second. It shall be executed before a judge of a court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

"Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically.

"Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

"Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

"Sixth. The judge before whom such contract or agreement is executed shall certify officially the time when and place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to

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him at the time the parties present making the same; the source and extent of his authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of either party or parties.

All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or any one else, for or on his or their behalf, on account of such services, in excess of the amount approved by the commissioner and secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid. (R. S. 2103)"

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Section 2104, Revised Statutes (25 U.S.C. 82)

"82. Payments under contracts restricted. No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement, other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement, until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of services under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid and, if not, it shall be paid in proportion to the services rendered under the contract.
(R. S. 2104)"

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Section 2105, Revised Statutes (25 U.S.C. 83)

"83. Payments under prohibited contracts; aiding in making prohibited contracts. The person so receiving such money contrary to the provisions of the two preceding sections, and his aiders and abettors, shall, in addition to the forfeiture of such sum, be punishable by imprisonment for not less than six months, and by a fine of not less than \$1,000. And it shall be the duty of all district attorneys to prosecute such cases when applied to do so, and their failure and refusal shall be ground for their removal from office. Any Indian agent, or other person in the employment of the United States, who shall, in violation of the provisions of the preceding section, advise, sanction, or in any way aid in the making of such contracts or agreements, or in making such payments are here prohibited, shall in addition to punishment herein imposed on the person making such contract, or receiving such money, be, on conviction, dismissed from the service of the United States, and be forever disqualified from holding any office of profit or trust under the same. (R. S. 2105)"

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Section 2106, Revised Statutes (25 U. S. C. 84)

"84. Assignments of contracts restricted. No assignment of any contracts embraced by section 81, or of any part of one shall be valid, unless the names of the assignees and their residences and occupations be entered in writing upon the contract, and the consent of the Secretary of the Interior and the Commissioner of Indian Affairs to such assignment be also indorsed thereon. (R. S. 2106)"

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Section 18, Act of June 30, 1913 (38 Stat. 97) (25 U.S.C. 85)

"85. Contracts for compensation for services in relation to enrollment in Five Civilized Tribes. Unless the consent of the United States shall have previously been given, all contracts made with any person, or persons, applicants for enrollment as citizens in the Five Civilized Tribes for compensation for services in relation thereto, are declared to be void and of no effect, and the collection or receipt of any moneys from any such applicants for citizenship shall constitute an offense against the laws of the United States, punishable by a fine of not exceeding \$500 or imprisonment ~~for~~ not exceeding six months, or both, and lands allotted to such applicants whether Indians or freedmen shall not be affected or encumbered by any character contracted prior to the time at which said land may be alienated under the laws of the United States. (Aug. 1, 1914, c. 222, 17, 38 Stat. 601)"

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Section 8, Act of July 4, 1884 (23 Stat. 97) (25 U.S.C. 88)

"88. False vouchers, accounts, or claims. Any disbursing or other officer of the United States, or other person, who shall knowingly present, or cause to be presented, any voucher, account, or claim to any officer of the United States, for approval or payment, or for the purpose of securing a credit in any account with the United States, relating to any matter pertaining to the Indian Service, which shall contain any material misrepresentation of fact in regard to the amount due or paid, the name or character of the article furnished or received; or of the service rendered, or to the date of purchase, delivery, or performance of service; rendered, or to the date of purchase, delivery, or performance of service, or in any other particular, shall not be entitled to payment or credit for any part of said voucher, account, or claim; and if any such credit shall be given or received, or payment made, the United States may recharge the same to the officer or person receiving the credit or payment, and recover the amount from either or from both, in the same manner as other debts due the United States are collected: Provided, That where an account contains more than one voucher the foregoing shall apply only to such vouchers as contain the misrepresentations: And provided further, That the officers and persons by and between whom the business is transacted shall, in all civil actions in settlement of accounts, be presumed to know the facts in relation to the matter set forth in the voucher, account, or claim: And provided further, That the foregoing shall be in addition to the penalties prescribed by law, and in no way affect proceedings under existing law for like offenses. Where practicable this section shall be printed on the blank forms of vouchers provided for general use. (July 4, 1884, c. 180, 8, 23 Stat. 97)"

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TITLE 43 - CODE OF FEDERAL REGULATIONS

Part 1 - Practice Before the Department of the Interior

Sec.

- 1.1 Purpose.
- 1.2 Definitions.
- 1.3 Who may practice.
- 1.4 Disqualifications; Federal officers and employees, and spouses.
- 1.5 Disqualifications; former Federal officers and employees, and spouses.
- 1.6 Signature to constitute certificate.
- 1.7 Disciplinary proceedings.

AUTHORITY: Secs. 1.1 to 1.7 issued under sec. 5, 23 Stat. 101; 5 U.S.C. 493.

SOURCE: Secs. 1.1 to 1.7 appear at 19 F. R. 9388, Dec. 31, 1954.

Prior Amendments

1954: 19 F. R. 8835, Dec. 23.

Sec. 1.1 Purpose. This part governs the participation of individuals in proceedings, both formal and informal, in which rights are asserted before, or privileges sought from, the Department of the Interior.

Sec. 1.2 Definitions. As used in this part the term:

(a) "Department" includes any bureau, office, or other unit of the Department of the Interior, whether in Washington, D. C., or in the field, and any officer or employee thereof;

(b) "Solicitor" means the Solicitor of the Department of the Interior or his authorized representative;

(c) "Practice" includes any action taken to support or oppose the assertion of a right before the Department or to support or oppose a request that the Department grant a privilege; and the term "practice" includes any such action whether it relates to the substance of, or to the procedural aspects of handling, a particular matter. The term "practice" does not include the preparation or filing of an application, the filing without comment of documents

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prepared by one other than the individual making the filing, obtaining from the Department information that is available to the public generally, or the making of inquiries respecting the status of a matter pending before the Department.

Sec. 1.3 Who may practice. (a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

(b) Unless disqualified under the provisions of sec. 1.4 or sec. 1.5 or by disciplinary action taken pursuant to sec. 1.7:

(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1954, shall be permitted to practice before the Department.

(2) Attorneys at law who are admitted to practice before the courts of any State, Territory, or the District of Columbia will be permitted to practice without filing an application for such privilege.

(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, ~~de~~ estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, district, or territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter.

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Sec. 1.4 Disqualifications; Federal officers and employees, and spouses. (a) No officer or employee of the Department, except in the proper discharge of his official duties, and no spouse of such person may practice before the Department.

(b) Except in the proper discharge of his official duties, no officer or employee of the United States, or of any corporation in which the United States has a proprietary interest, or of the District of Columbia may practice before the Department (1) in relation to any matter respecting which the United States is a party or directly or indirectly interested if he is to receive any compensation for his services, or (2) in the prosecution or support of any claim against the United States. If the matter is not a claim against the United States, and if he will receive no compensation for his services, he may practice in relation to the matter upon first making a showing to that effect and obtaining permission from the Solicitor. This paragraph does not apply in so far as an individual may have been exempted by or pursuant to statute from section 281 or 283, Title 18, of the United States Code.

Sec. 1.5 Disqualifications; former Federal officers and employees, and spouses. (a) No individual who has been an officer or employee of the United States, or of a corporation in which the United States has a proprietary interest, or of the District of Columbia, within two years next after he has ceased to be so employed, may practice before the Department in the prosecution of any claim against the United States which was pending in the Department during the period ~~he~~ was so employed. This paragraph does not apply in so far as an individual may have been excepted by or pursuant to statute from section 190 of the Revised Statutes (5 U.S.C. 99).

(b) No individual may practice before the Department with respect to any matter to which he personally gave consideration or as to which he personally gained knowledge while serving as an officer or employee of the United States, or of a corporation in which the United States has a proprietary interest, or of the District of Columbia.

(c) No individual shall knowingly assist or accept assistance from, or share fees with, any person with respect to any matter before the Department to which the latter person gave consideration personally or as to the facts of which the latter person gained

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knowledge personally while serving as an officer or employee of the United States, or of a corporation in which the United States has a proprietary interest, or of the District of Columbia.

(d) (1) A former officer or employee of the Department may not practice before the Department or render any assistance to persons other than the personnel of the Department with respect to any matter which was pending before the Department during the period of his employment, without first obtaining the permission of the Solicitor. Such permission will not be granted, within two years next after he has ceased to be so employed, with respect to any such matter constituting a claim against the United States, except in so far as he may have been excepted by or pursuant to statute from section 190 of the Revised Statutes (5 U.S.C. 99). Such permission will not be granted if it appears that the proposed representation or assistance would be unlawful, unethical, or contrary to the public interest.

(2) In applying for such permission an individual shall file a certificate or affidavit stating: (i) His former position with the Department; (ii) the nature of the matter in connection with which he desires to act; (iii) the extent, if any, to which he had knowledge of, or was responsible for, or gave personal consideration to, or performed work that was related in any way to, such matter during the period of his employment; and (iv) the circumstances surrounding his employment to handle the matter.

(3) The limitations imposed in subparagraph (1) of this paragraph with respect to a former officer or employee of the Department are likewise applicable to the spouse of such officer or employee. In submitting a certificate or affidavit under subparagraph (2) of this paragraph, the spouse of a former officer or employee will supply, with respect to subdivisions (i) and (iii) of that subparagraph, data concerning the former officer or employee.

Sec. 1.6 Signature to constitute certificate. When an individual who appears in a representative capacity signs a paper in practice before the Department, his signature shall constitute his certificate (a) that under the provisions of this part and the law, he is authorized and qualified to represent the particular party in the matter; and (b) that he has read the paper; that to the best of his knowledge, information, and belief there is good ground to support its contents; that it contains no scandalous or indecent matter; and that it is not interposed for delay.

Sec. 1.7 Disciplinary proceedings. (a) Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Department on grounds that he is incompetent, unethical, or unprofessional, or that he is practicing without authority under the provisions of this part, or that he has violated any provisions of the laws and regulations governing practice before the Department, or that he has been disbarred or suspended by any court or administrative agency. Persons practicing before the Department should observe the Canons of Professional Ethics of the American Bar Association and those of the Federal Bar Association, by which the Department will be guided in disciplinary matters.

(b) Whenever in the discretion of the Solicitor the circumstances warrant consideration of the question whether disciplinary action should be taken against an individual who is practicing or has practiced before the Department, the Solicitor shall appoint a panel to consider and dispose of the case. The panel shall give the individual adequate notice of, and an opportunity for a hearing on, the specific charges against him. The hearing shall afford the individual an opportunity to present evidence and cross-examine witnesses. The panel shall render a decision either (1) dismissing the charges, or (2) reprimanding the individual or suspending or excluding him from practice before the Department.

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M-36069

AUTHORITY OF THE SECRETARY RESPECTING THE
APPROVAL OF CONTRACTS BETWEEN INDIAN TRIBES AND ATTORNEYS

Organized Tribes -- Unorganized Tribes -- Secretarial Discretion

A statutory provision empowering organized Indian tribes to employ counsel subject only to the requirement that the choice of counsel and the fixing of fees shall be subject to the approval of the Secretary of the Interior supersedes, as to such employment, a prior statutory provision regulating in general terms the contractual relations of Indian tribes with private parties.

Where contracts between unorganized Indian tribes and attorneys are required by statute to comply with certain specific requirements in addition to the requirement of receiving the approval of the Secretary of the Interior, the Secretary's authority is not limited to examining such contracts for compliance with the specific statutory requirements, but he may consider such a contract as a whole, including any provisions unrelated to the specific statutory requirements, and approve or withhold approval as his judgment may dictate.

Under a statutory provision governing the employment of attorneys by organized Indian tribes, which imposes the requirement of receiving the approval of the Secretary of the Interior only as to the choice of counsel and the fixing of fees, approval by the Secretary of contractual provisions wholly unrelated to the choice of counsel or the fixing of fees is not required, and the Secretary cannot properly require the inclusion in such a contract of provisions having no reasonable relationship to the choice of counsel or the fixing of fees.

Under a statutory provision empowering organized Indian tribes to employ attorneys subject to the approval of the Secretary of the Interior respecting the choice of counsel and the fixing of fees, the Secretary is vested with wide discretion in determining what factors should be taken into account in passing upon the choice of counsel and the fixing of fees, and he may grant or withhold his approval upon the basis of whatever grounds he deems to be properly related to these matters, provided his action is not arbitrary or capricious.

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The exercise of authority by the Secretary of the Interior over contracts between Indian tribes and attorneys does not constitute an unlawful interference with the free choice of counsel by Indian tribes, since the Secretary's authority is conferred by statutes enacted by the Congress in the exercise of the plenary power possessed by that body over Indian tribes and their affairs.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington 25, D.C.

June 22, 1951

M-36069

Memorandum

To: The Secretary

From: The Solicitor

Subject: Authority of the Secretary respecting the approval of contracts between Indian tribes and attorneys.

This responds to your request for an expression of my opinion on the scope of your authority under the applicable statutory provisions relating to the approval of contracts between Indian tribes and attorneys. It appears from your memorandum that the opinion is desired as a guide in the preparation and promulgation of new regulations governing the negotiation, execution, and consideration of such contracts.

The applicable statutory provisions are now codified in 25 U.S.C., 1946 ed., as sections 81 and 476.

Section 81 is derived from section 2103 of the Revised Statutes, which, in turn, was based upon section 3 of the act of March 3, 1871 (16 Stat. 544, 570), and sections 1 and 2 of the act of May 21, 1872 (17 Stat. 136). Section 81 reads in part as follows:

"No agreement shall be made by any person with any tribe of Indians * * * for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

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* * * * *

"Second. It shall * * * bear the approval of the Secretary of the Interior * * * 1/ indorsed upon it.

* * * * *

"All contracts or agreements made in violation of this section shall be null and void * * *."

Section 81 does not specifically mention contracts between Indian tribes and attorneys. Such contracts are, however, plainly covered by the section if they provide for services relating to any one or more of the matters specified in the section. It appears, in fact, that the impositions to which the Indians had been subjected by unscrupulous members of the legal profession constituted an impelling reason for the enactment of the legislation. As was pointed out in a memorandum dated January 22, 1946, from the Solicitor to the Commissioner of Indian Affairs:

"This legislation was enacted to protect the Indians in their contractual dealings with attorneys and agents, a field in which the Indians were not without sad experience. The Indians had previously been the victims of monstrous and shameful frauds perpetrated by agents and attorneys, and this legislation which drastically curtailed the right to contract was obviously intended as an extreme measure designed to remedy what was regarded as a great evil. * * *"

Section 476 is derived from section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 987). This section authorizes Indian tribes to organize, and it provides that the constitution adopted by any Indian tribe "shall vest in such

1/ The omitted words are "and the Commissioner of Indian Affairs." By Reorganization Plan No. III of 1950 (15 F. R. 3174), the authority to approve contracts conferred on the Commissioner by section 81 was transferred to the Secretary.

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tribe or its tribal council" the power, among others, "To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior."^{2/}

As the earlier statutory provision (section 81), is, by its terms, applicable to all tribes residing within the territorial limits of the United States, and as the later statutory provision (section 476) is applicable only to those tribes which have adopted constitutions under it, the question arose whether section 476 had superseded section 81 with respect to contracts between organized tribes and attorneys. In answering this question in the affirmative, the Solicitor said in a memorandum dated January 23, 1937: ^{3/}

"* * * To the extent of any conflict or inconsistency, it is clear that section 16 is controlling and supersedes the prior law. Requirements of the prior law not directly inconsistent or conflicting may also be superseded as to the particular kind of contract to which section 16 applies if such was the intent of Congress. A consideration of the general background and purpose of the Indian Reorganization Act leaves no doubt that the purpose of the statutory provision in question was to increase the scope of responsibility and discretion afforded the tribe in its dealings with attorneys. Earlier

^{2/} The employment of counsel for the prosecution of claims of the tribes against the United States is dealt with in section 15 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1053, 25 U.S.C., 1946 ed., sec. 70n). This section requires that attorneys for Indian tribes which are organized under the provisions of the Indian Reorganization Act be selected pursuant to the constitution and bylaws of the tribes. These constitutions and bylaws usually paraphrase the provisions in section 476 which require the choice of counsel and the fixing of fees to be approved by the Secretary of Interior. The employment of attorneys by other claimants is subjected to the provisions of section 81.

^{3/} The text of this memorandum appears in the Handbook of Federal Indian Law at p. 281.

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drafts of legislation contained provisions limiting the fees that might be charged. After considerable discussion before the Senate Committee (Hearings before the Committee on Indian Affairs, United States Senate, 73rd Congress, 2d session, S. 2755 and S. 3645, part 2, pages 244-247), it was decided that the Secretary of the Interior should have the added power to approve or veto the choice of counsel. This discussion would have been futile and the statutory provision would have been meaningless if the intention had been to make those contracts subject to the provisions of section 81, Title 25 of the Code."

As the view expressed by the Solicitor in 1937 appears to be correct, the question of the scope of the Secretary's authority must be separately considered under sections 81 and 476.

I

Section 81 prescribes a number of requirements which a contract of employment between an Indian tribe and an attorney must meet, in addition to the requirement that the contract must bear the Secretary's approval indorsed upon it. These specific statutory requirements operate to limit the Secretary's discretion, in that none of them can be dispensed with by the Secretary,^{4/} and it is the duty of the Secretary to see to it that the requirements are met by any contract coming before him for approval. It does not follow, however, that the Secretary's authority is limited to examining proposed contracts for compliance with the statutory requirements, and that the Secretary cannot withhold his approval for reasons unrelated to the specific requirements of the statute. The contract itself may well contain many provisions which are unrelated to the specific statutory requirements, and inasmuch as the contract in its entirety is subject to the Secretary's approval, the Secretary clearly would be authorized to consider the contract as a whole, including any provisions unrelated to the specific statutory requirements, and approve or withhold approval as his judgment might dictate.

^{4/} 18 Op. Atty. Gen. 498 (1886); McMurray v. Choctaw Nation, 62 Ct. Cl. 458 (1926), cert. denied 275 U. S. 524.

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"The statute is plain in its provisions - that no lease, of the character here in question, can be valid without the approval of the Secretary. Such approval rests in the exercise of his discretion; unquestionably this authority was given to him for the protection of Indians against their own improvidence and the designs of those who would obtain their property for inadequate compensation. It is also true that the law does not vest arbitrary authority in the Secretary of the Interior. But it does give him power to consider the advantages and disadvantages of the lease presented for his action, and to grant or withhold approval as his judgment may dictate."

See also, to the same general effect, Davis v. Williford, 271 U. S. 484 (1926).

Of course, the authority conferred upon the Secretary by section 81, although very broad, is not unlimited. Approval of a contract could not be withheld capriciously or on purely arbitrary grounds. Moreover, as the power to contract is vested in the tribe, the Secretary could not initiate or make a contract for a tribe. ^{5/} Subject to these limitations and to the observance of the specific requirements imposed by section 81, it is my opinion that the discretionary authority vested in the Secretary under that section is broad enough to empower the Secretary to grant or withhold approval of contracts between Indian tribes and attorneys in accordance with his view as to what is necessary or advisable in order to protect the interests of the Indians, and to prescribe in advance the terms and conditions which a contract between an Indian tribe and legal counsel must contain in order to meet with the Secretary's approval.

II

The provisions of section 476 which are pertinent to the present inquiry circumscribe the limits of the Secretary's authority by confining the requirement of Secretarial approval, in so far as contracts between organized Indian tribes and attorneys are concerned, to the choice of counsel and the fixing of fees. In this

^{5/} Mott v. United States, 283 U.S. 747, 751 (1931); Midland Oil Co. v. Turner, 179 Fed. 74 (8th Cir., 1910); Jennings v. Wood, 192 Fed. 507 (8th Cir., 1911).

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It was the purpose of Congress in section 81 to provide statutory safeguards that would be binding on the Indians and their attorneys, and on the Department as well, but Congress apparently realized the impracticability of covering by statute in advance every factor that should be taken into account and, hence, provided for the additional safeguard of Secretarial approval. In doing so, it was the evident intention of the Congress to enable the Secretary to condition his approval upon such other requirements as he might deem to be necessary for the protection of the Indians.

In LaMotte v. United States, 254 U. S. 570 (1921), the Supreme Court upheld the validity of regulations promulgated by the Secretary of the Interior for the purpose of prescribing in advance the terms and conditions which leases should contain in order to meet his approval under a statute which authorized the Indians to make such leases "subject only to the approval of the Secretary of the Interior." After pointing out that the failure of the leasing provision to say anything about regulations was unimportant, and that the power to make regulations for the purpose of carrying the leasing provision into effect would be implied, the Supreme Court said (p. 577):

"Without doubt the regulations prescribed operate to restrain the Indian from leasing in his own way and on his own terms, but this is not a valid objection. If there were no regulations, the disapproval of a lease satisfactory to him would work a like restraint. Manifestly some restraint is intended, for the leasing provision does not permit the Indian to lease as he pleases, but only with the Secretary's approval."

Statutes providing for the approval by the Secretary of the Interior of contracts made by Indians are numerous, and, whenever the courts have been called upon to consider such statutes, they have uniformly held that the power of approval carries with it wide discretionary authority to determine the conditions under which approval will be granted. Thus, in Anicker v. Gunsburg, 246 U. S. 110 (1918), the Court had under consideration the power of the Secretary under section 2 of the act of May 27, 1908 (35 Stat. 312), which provided that leases of restricted lands of members of the Five Civilized Tribes in Oklahoma might be made with the approval of the Secretary of the Interior, under rules and regulations prescribed by him, and not otherwise. The Court said (p. 119):

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respect, the section differs materially from section 81, under which the contract in its entirety is subject to Secretarial approval. The considerations which may be invoked for withholding approval under section 476 from a contract made by an organized tribe with legal counsel must, therefore, bear some reasonable relationship either to the choice of counsel or to the fixing of fees. For example, as contract provisions wholly unrelated to these matters are not subject to the Secretary's approval, any attempt to require the inclusion in a contract of such unrelated provisions as a condition precedent to the granting of Secretarial approval would be beyond the scope of the Secretary's authority under this section. See Work v. Mosier, 261 U.S. 352 (1923); Ballinger v. Frost, 216 U.S. 240 (1910).

Wide discretion is, however, vested in the Secretary with regard to determining what considerations ought to be taken into account under section 476 in passing upon the choice of counsel and the fixing of fees. Subject to the traditional limitations against arbitrary or capricious action, I believe that the Secretary may grant approval to or withhold approval from a contract between an organized tribe and legal counsel for any reason or reasons which he deems to be properly related to the choice of counsel or the fixing of fees. ^{6/} Similarly, the Secretary may promulgate regulations prescribing in advance the terms and provisions relating to these matters which a contract between an organized tribe and legal counsel must contain in order to receive his approval.

III

The foregoing discussion outlines in general terms the scope of the Secretary's authority under sections 81 and 476 and the limitations upon the exercise of such authority. This general treatment is necessary for the reason that it is not possible to foresee and provide for every possible contingency or eventuality that might call for the exercise of the Secretary's authority under these respective sections. The views expressed will, I hope, supply guidance for the formulation of regulations governing the employment of attorneys by Indian tribes.

^{6/} See, in this connection, Southern Pacific Co. v. Olympian Co., 260 U. S. 205 (1922); Sunderland v. United States, 266 U. S. 226, 235 (1924).

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In the formulation of the views stated in this memorandum, consideration has been given to the comments made by lawyers and others on a memorandum that was issued by the Commissioner of Indian Affairs on November 9, 1950. None of the arguments made, and none of the authorities cited, in those comments requires that the views expressed above be modified in any way.

One erroneous thought which appears to run through the various comments received by the Department should be mentioned. This is that the exercise by the Secretary of authority such as I have outlined would interfere with the free choice of counsel by Indian tribes and, therefore, would be unlawful. This objection is without merit, since the Secretary's authority is derived from statutes validly enacted in the exercise of the plenary power possessed by Congress over the property and affairs of Indian tribes. Lone Wolf v. Hitchcock, 187 U. S. 553, 565 (1903); United States v. Kagama, 118 U. S. 375, 384 (1886); United States v. Sandoval, 231 U. S. 28, 43 (1913); United States v. Nice, 241 U. S. 591 (1916); Bowling v. United States, 233 U. S. 528 (1914); Winton v. Amos, 255 U. S. 373 (1921). That this power extends to the regulation of the contract relations between Indians and private parties is no longer open to question. See Pasley v. Union National Bank, 278 Pac. 621 (Okla., 1928); Osage Motor Co. v. Pappin, 281 Pac. 217 (Okla., 1929); Osage Motor Co. v. United States, 33 F. (2d) 21 (8th Cir., 1929), cert. denied 280 U. S. 577.

Whether the existing restrictions on the power of Indian tribes to employ attorneys of their own choice should be removed in whole or in part is a matter for determination by the Congress. Until that body acts, the existing restrictions are binding on the Indians and their attorneys, and also on the Department.

(Sgd.) Mastin G. White
Solicitor

83-3, 3-17-58

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington 25, D. C.

January 31, 1946

MEMORANDUM for Assistant Secretary Chapman.

Attached is a letter to William L. Paul, Jr., concerning a contract of employment between Mr. Paul and the Tlingit Indians of the Village of Douglas, Alaska. There is also attached a letter relating to a contract of employment between the Seneca-Cayuga Tribe of Indians of Oklahoma, and N. M. Coursolle and W. C. Preus. In both letters it is suggested that contracts may be executed between individual Indians and attorneys and that it is only where payment of fees or expenses out of restricted funds under the control of this Department is contemplated that approval of such contracts becomes necessary.

A question has been raised as to the applicability of 25 U. S. C. sec. 85 to such individual contracts. That section provides:

"No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given. (June 30, 1913, c. 4 sec. 18, 38 Stat. 97.)"

It is my opinion that section 85 does not apply to contracts between individual Indians and attorneys unless specific tribal funds or property held by the United States are the subject matter of the contract. It has no application where it is contemplated merely that a claim is to be prosecuted against the United States by such Indians. The legislative history of section 85 indicates that the type of contract which it was intended to prohibit dealt with tribal funds or property which the United States was holding in trust for the Indians. The legislative history also reveals that it was the intention of Congress that such funds or property should be delivered to the Indians undiminished in quantity and without the necessity for the employment of attorneys, and the consequent payment of fees to them, to prod the Government to do something which it was already obliged to do. (50 Con. Rec., pp. 2043-2046, 2080-2082.) Therefore, I believe that the language which has been used in the two attached letters concerning contracts between individual Indians and the respective attorneys is legally correct.

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(sgd.) Warner W. Gardner
Solicitor

125184

Memorandum, January 31, 1946

**ATTORNEY CONTRACTS -- APPLICABILITY OF 25 U. S. C. SEC. 85 TO CONTRACTS
WITH INDIVIDUAL INDIANS.**

Section 85, U. S. C. does not apply to contracts between individual Indians and attorneys unless specific tribal funds or property held by the United States are the subject matter of the contract.

GARDNER, Solicitor:

83-3, 3-17-58

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington

February 5, 1946

William L. Paul, Jr.,

Juneau, Alaska

Dear Mr. Paul:

Mr. Don C. Foster, General Superintendent of the Alaska Native Service, has referred to the Commissioner of Indian Affairs the contract of employment whereby the Tlingit Indians of the Village of Douglas, Alaska, employed Mr. L. Frederick Paul and yourself to represent them in the investigation, formulation, and prosecution of their claims "arising out of tribal ancestral possessory rights to land and water of a legal or equitable nature."

On August 24, 1944, the Solicitor for this Department, after considering a contract similar to the one now here, stated: "The voluntary organizations that have been set up under the Wheeler-Howard Act of May 1, 1936, and its extension, comprise only part of the population of these communities, and therefore cannot validly claim what is the property of the entire community." The contract in question does not purport to be of the Douglas Indian organization, however, but with the residents of Douglas acting in general council, as the resolution of February 5, 1945, states that a meeting was held by "members of the band and clans of the town of Douglas." An examination of our records discloses that the town of Douglas was started in 1886 as a mining town rather than as a native village. The following is quoted from an economic survey of the town of Douglas made in 1940:

"Some or most of the Tlingit Indians living in Douglas, arrived at the time gold mining in the vicinity was started. They were originally from the Taku country and from a clan of the same name. Some came from Auk Bay and Tyee Harbor, some from Klukwan, some from other villages."

The Tlingit Indians residing in Douglas, therefore, do not constitute a band but rather are merely individual members of other bands located elsewhere. I have not, therefore, approved the contract.

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The residents of the Town of Douglas, as such individual members of other bands, may employ counsel for the protection of their individual rights without approval of the contracts by this Department. The matter of fees is one for determination by the parties to the contracts, but it should not be contemplated that payment would be made from funds under the control or supervision of this Department.

The contract is returned herewith.

Sincerely yours,

(sgd.) Oscar L. Chapman
Assistant Secretary

Enclosures

83-3, 3-17-58

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON

February 5, 1946

N. M. Coursolle and W. C. Preus, Esqs.
1020 Rand Tower
Minneapolis 2, Minnesota

Gentlemen:

This will refer to a contract of employment between the Seneca-Cayuga Tribe of Indians of Oklahoma and yourselves, dated July 2, 1941, which was submitted to the Commissioner of Indian Affairs under date of July 16, 1945, by Hon. Henrik Shipstead. For your information, there is enclosed a copy of a letter dated July 25, 1945, from the Assistant Commissioner of Indian Affairs to Senator Shipstead.

The contract provides that it shall be the duty of the attorneys to represent the tribe in the investigation, formulation and prosecution of tribal claims against the United States "growing out of any treaties between the said Indians and the United States or with any State or Territory or with any person or persons or any laws of Congress." (Underscoring supplied.) It is difficult to determine how the Indians would have ~~claims~~ against the United States growing out of treaties between the Indians and States, Territories, or individual persons.

This Department has no knowledge of any claims which the Seneca-Cayuga Tribe may have against the United States. The Superintendent of the Quapaw Agency has advised the Commissioner of Indian Affairs that Mr. Louis Allen Youpe of McGregor, Minnesota, held several meetings with the Seneca-Cayuga Tribe in 1941, prior to the execution of the contract, and advised tribal officials that the tribe was considered to be a member of the former Northern Indian Confederacy, and as such, could prosecute their claims against the United States under the provisions of a bill, H. R. 7047, then pending in Congress.

H. R. 7047 was a bill to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claims of the Northern Indian Confederacy. This Department, under date of

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August 26, 1942, made an adverse report on H. R. 7047 and also upon H. R. 4044, a bill for the same purpose in the 78th Congress. Both of these bills failed of enactment. A similar bill has not been introduced in the present Congress. For your information, I am enclosing a copy of the report dated August 26, 1942, on H. R. 7047. Your particular attention is directed to the first paragraph on page 2 of the report, pointing out that a number of tribes who would be affected by the bill, among them the Seneca Tribe, have already had their claims adjudicated by the Court of Claims.

The foregoing is for your information only. This Department has no intention of refusing to approve the employment of an attorney or attorneys by the Seneca-Cayuga Tribe on the ground that we have no information regarding their claims or that the claims are not believed to be justifiable. On the contrary, if the Indians believe they have valid claims and desire to retain the services of counsel to develop such claims on a contingent basis, this Department will interpose no objection if the interests of the Indians are properly protected. For the reasons hereinafter stated, however, I am loath to approve the contract now here and it is returned herewith.

The contract provides "and said attorneys shall also represent any individual member or members of said tribe who may have any claims of whatsoever nature growing out of any treaties or laws of Congress, or otherwise." The tribe is not authorized to employ counsel for the prosecution of claims of individual Indians. Such contracts must be executed between the individual Indians and the attorneys and approved by this Department if payment of fees or expenses out of restricted funds under the control of this Department is contemplated.

In the first paragraph beginning on the second page of the contract, concerning compensation, there is no recital that the compensation for the services under the contract is to be wholly contingent upon a recovery for the Indians. In line three of the same paragraph, the word "equitable" should be "equitably." In line 8 of the same paragraph, the word "or" following the word "action" should be "of."

The contract provides that it shall continue in force and effect for a period of five years, beginning with the date of its approval by the Secretary of the Interior. This provision unquestionably contemplated that the contract would be presented to

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the Secretary in due course, as is required by the regulations. No explanation of the delay of over four years in presenting the contract for approval has been offered.

I shall be glad to consider a contract between the Seneca-Cayuga Tribe and yourselves which does not contain the foregoing objections. Apparently it would be desirable to renegotiate the contract as the most practicable method of removing the objections. I am, therefore, enclosing a form of attorney's contract which, with but slight modification, will be adequate for the purpose.

A copy of this letter is being directed to the Seneca-Cayuga Tribe through the Superintendent of the Quapaw Agency, Miami, Oklahoma.

Sincerely yours,

(sgd.) Oscar L. Chapman
Assistant Secretary

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Release 83-4, 11-1-59

8 ENROLLMENT

- 8.1 General. The Bureau function over enrollment matters is derived from its responsibility for the administration of tribal assets and for determining who is entitled to share in any distribution which may be made of such assets.
- A. Purpose. Enrollment may be for the purpose of (1) membership in an Indian tribe, (2) distribution of judgment funds, or (3) final disposition of tribal assets.
- B. Source of Authority. Enrollment may be authorized by the tribe, by act of Congress, or by Departmental regulations issued pursuant to legislation by Congress.
- 8.2 Enrollment as a Member of an Indian Tribe.

- A. Authority. In the absence of specific legislation by Congress to the contrary, an Indian tribe has complete authority to determine for tribal purposes all questions relating to its own membership. The membership requirements are usually set forth in tribal constitutions and ordinances or resolutions enacted pursuant to such constitutions. A tribe having a constitution with no membership provision or a tribe having no constitution may, by action of the tribal members meeting in general session, adopt an ordinance or resolution governing tribal membership. A tribe having a written constitution with no membership provision should adopt an amendment in accordance with the procedures set out in the constitution to specify requirements for membership in the tribe.

Property rights attached to membership are generally under the control of the Secretary of the Interior rather than the tribe. Therefore, most tribal constitutions provide that membership ordinances or resolutions are subject either to the review or the approval of the Secretary of the Interior. It should be noted, however, that a membership roll maintained by the governing body of the tribe is not necessarily binding on the Secretary when a distribution of tribal funds or other property held in trust by the United States is to be made.

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- (1) Qualifications. A person may qualify for enrollment automatically, by meeting established requirements and procedures, or by adoption.
- (a) Automatically. A tribe may authorize enrollment as members, without further action on the part of the tribal governing body or of the Secretary of the Interior, those persons who meet established membership requirements. If a person meets such requirements, he is considered to qualify automatically for enrollment as a member of the tribe, but such enrollment should be initiated by the person seeking to be enrolled or by someone acting in his behalf.
- (b) Meeting Established Requirements. The tribal governing body may consider imposing the requirement that it be furnished a copy of children's birth certificates, together with names of the mother and father and information as to whether they are members of the tribe. Also, the constitution, ordinance or resolution may provide that a person seeking enrollment must file an application and if the application is approved by the body of the tribe vested with authority to pass on such matters, the individual may be enrolled as a member of the tribe.
- (i) Residence as requirement for tribal membership.

Some of the constitutions provide that descendants of persons on the basic membership roll must be born on the reservation to be eligible for enrollment. The tribes should be encouraged to amend their constitutions to eliminate that requirement and to substitute therefor a blood degree limitation. In many cases, depending upon the wording of the constitution, it may be possible for the tribal governing body to pass a resolution

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defining what constitutes "residence." This might provide that men and women in the military service and those who leave the reservation for employment purposes, will, under such circumstances, be considered as maintaining a constructive residence on the reservation and thereby extend eligibility to children born away from the reservation. These are merely general ideas which may be presented to and considered by the tribal governing bodies.

It will be necessary to consider each situation in the light of the constitution or membership ordinance now in effect and assist the tribe in determining the best manner of dealing with the situation.

(c) Adoption. Enrollment by adoption requires affirmative action by the tribe and approval by the Secretary, and in the absence of an approved general adoption ordinance or resolution establishing procedures and qualifications for adoption, each individual case must be approved by the Secretary of the Interior. Tribal governing bodies are encouraged to adopt general ordinances establishing qualifications for adoption thus eliminating the necessity of the Secretary passing on each individual case.

B. Dual Membership. A person may possess qualifications which would enable him to meet the membership requirements in more than one tribe and in such cases the individual should be required to elect the tribe with which he wishes to be enrolled and to relinquish in writing his claim to membership in the other. In the case of a minor or incompetent the election should be made by the parent, guardian, or other person acting in his behalf. Copies of the relinquishment should be furnished the local offices of the Bureau having administrative jurisdiction over the affairs of the particular tribes concerned.

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Dual membership in an Indian tribe should not be confused with enrollment for the purpose of sharing in the distribution of judgment funds. It is possible to be enrolled as a member of an Indian tribe and also to be enrolled for the purpose of sharing in the judgment funds of another tribe, depending upon the basis on which the roll for the payment of the judgment funds is prepared.

C. Loss of Membership. A person may lose membership in an Indian tribe by:

- (1) Relinquishment. A member of an Indian tribe may relinquish his membership by submitting a statement in writing to the tribal governing body. Relinquishment may be limited or complete, depending on the wording of the statement. Copies of relinquishments should be furnished the local office of the Bureau and the tribe. Except where the individual's name appears on a final tribal roll, relinquishment of membership cannot be denied.
- (2) Abandonment. A person may lose membership if the constitution, ordinance, or resolution provides for loss of membership under certain conditions and the individual meets those conditions. Removal generally requires affirmative action by the tribe.

Specific procedures should be established to provide for removal of individuals from membership in the tribe. If the constitution, ordinance or resolution which establishes such procedures is approved by the Secretary, approval of each individual case is not required.

The procedures should provide that the member who is subject to removal action shall be notified by certified mail by the body of the tribe vested with authority to handle such cases that he is subject to removal action and if he desires he may, within 30 days from receipt of such notice, request and appear at a hearing to show cause why his name should not be

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removed from the tribal roll. A record of the proceedings should be kept and if the finding is against the person who is the subject of removal, a resolution should be adopted stating all the facts on which the finding is based with the conclusion that the person is removed from membership in the tribe and the effective date and the individual so notified. If no hearing is requested within the 30 days, the governing body of the tribe shall adopt a resolution formally removing the individual's name from the roll.

- D. Re-enrollment. A person who has relinquished his membership or has been removed by tribal action may be re-enrolled if he meets the requirements in effect at the time he seeks re-enrollment and if the body of the tribe vested with authority to handle such matters approves his re-enrollment.
- E. Responsibility of Superintendent. If the Superintendent knows of specific instances where an individual is automatically qualified for enrollment as a member of an Indian tribe but the tribal governing body does not enroll him or where an individual does not meet the tribal membership requirements and is enrolled as a tribal member, it is the Superintendent's responsibility to bring the matter to the attention of the tribal governing body and if that body fails to act the matter should be brought to the attention of the Area Director who will inform the Commissioner of Indian Affairs.

8.3 Enrollment for Distribution of Judgment Funds.

- A. Authority. Rolls for the distribution of judgment funds are prepared under the direction of the Secretary of the Interior pursuant to an act of Congress.
- (1) Qualifications. The eligibility requirements are those specified in the statute or in rules and regulations issued by the Secretary pursuant to the statute.
- (2) Burden of Proof. The burden is on the applicant to prove his eligibility for enrollment.

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- (3) Determination. A determination of eligibility of each applicant is made by the official authorized to prepare the roll.
 - (4) Rejection. A notice of rejection is sent by certified mail, return receipt requested, to each person found ineligible for enrollment. Such notice should set forth the reason the applicant was found ineligible and should contain information as to his right of appeal.
 - (5) Appeals. Appeals should be filed in accordance with the procedures set out in the regulations.
 - (6) Final Determination. The Secretary or his authorized representative will consider each appeal and determine whether the appellant is eligible to be enrolled. The appellant will be notified of the Secretary's determination and the Secretary's decision is final and conclusive.
- B. Preparation and Approval. After all appeals have been determined, the roll shall be prepared by the appropriate field office and submitted to the Commissioner of Indian Affairs for presentation to the Secretary of the Interior for final approval.

8.4 Enrollment for Termination of Federal Trusteeship (Final Rolls)

- A. Purpose. Final rolls are prepared for the purpose of distributing tribal assets and for terminating Federal trustee relations with the tribal group.
- B. Authority. Final rolls are prepared only when specifically authorized by Congress.
 - (1) Qualifications. The eligibility requirements are those specified in the statute or in rules and regulations issued by the Secretary pursuant to the statute.

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- (2) Procedure. The statute usually provides that the tribe shall have a period of time within which to prepare and submit to the Secretary for publication in the Federal Register, a proposed roll of persons who meet the eligibility requirements and who were living on the date of the act. If the tribe fails to submit such a roll within the prescribed time the Secretary is authorized to prepare a proposed roll and to have it published in the Federal Register.
- (3) Preparation of Proposed Roll. The names of persons should be listed in alphabetical order and the roll should contain at least the following information, but may contain such additional information as may be deemed necessary.
- (a) Basic and new roll number.
 - (b) Name
 - (c) Sex
 - (d) Date of birth.
 - (e) Degree of Indian blood (when individual possesses blood of more than one tribe, the quantum of blood of each tribe should be shown separately).
 - (f) Family relationship.
 - (g) Residence
 - (h) Remarks (This column should indicate the relationship of the individual to the person through whom enrollment rights are claimed and any additional information deemed necessary.)
- (4) Publication. When completed the proposed roll shall be submitted in sextuplicate by the Area Director to the Commissioner for presentation to the Secretary for publication in the Federal Register. All copies should be clear and legible.

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- (5) Appeals. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within the time specified in the statute file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. Appeals should be filed and handled in accordance with Section 42, Title 25, Code of Federal Regulations.
- (6) Determination of Appeals. The Secretary or his authorized representative will consider the records presented with each appeal and determine whether the appellant is eligible to be enrolled. The appellant will be notified of the Secretary's determination and the Secretary's decision is final and conclusive.
- (7) Preparation and Publication of Final Roll. Upon the disposition of all appeals, a final roll of the members of the tribe shall be prepared by the Commissioner of Indian Affairs and submitted to the Secretary of the Interior for approval and publication in the Federal Register.
- (8) Proclamation. When required by the statute, the Secretary shall issue a proclamation as to the final closure of the roll.

8.5 Rolls Defined.

- A. Basic Roll is the list of persons used as the basis for determining eligibility for membership in the tribe. Most tribal constitutions specify a census roll as the basic roll. However, an allotment roll or an annuity payment roll may be used for that purpose. It should be noted that generally the allotment roll and the annuity payment roll do not show the quantum of Indian blood possessed by the individuals listed thereon.
- B. Tribal Roll is the list of persons who meet the requirements for membership in an Indian tribe established by the tribe itself or by an act of Congress.

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- C. Census Roll is a list of the population of the reservation. The census roll usually includes in addition to the members of the tribe all other persons affiliated with the tribal group, Indian and non-Indian.

Release 83-4, 11-1-59

APPLICATION FOR ENROLLMENT

Application No. _____ Date received: _____

Name _____ Sex: _____

Indian, maiden or other name by which you are known _____

Address _____

Date of Birth _____ Degree of blood of the tribe _____

Does your name appear on basic membership roll? yes no

If so, give your name as listed on basic membership roll _____

If not, give name(s) of ancestor(s) through whom enrollment rights are claimed.

Relationship to you _____

Is ancestor living or deceased _____

If living, give present address of ancestor _____

If deceased, give date of death _____

Roll number of ancestor on basic membership roll _____

Degree of Indian blood of the tribe _____

Are you enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

TRACE ANCESTRY TO ANCESTOR ON BASIC MEMBERSHIP ROLL

Name of father _____

Indian or other name by which he was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) he enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of mother _____

Indian, maiden or other names by which she was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) she enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of father's father _____

Indian or other names by which he was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) he enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of father's mother _____

Indian, maiden and other names by which she was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) she enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of father's grandfather _____

Indian or other names by which he was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) he enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of father's grandmother _____

Indian, maiden and other names by which she was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) she enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of mother's father _____

Indian or other name by which he was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) he enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of mother's mother _____

Indian, maiden and other names by which she was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) she enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of mother's grandfather _____

Indian or other names by which he was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) he enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

Name of mother's grandmother _____

Indian, maiden and other names by which she was known _____

Degree of blood of the tribe _____ Degree of other blood _____

Is (was) she enrolled with any other tribe of Indians? yes no

If so, state tribe and roll number _____

In executing the foregoing application and making the statements therein set forth and attached thereto, I am fully aware of the provisions of Section 1001, Title 18, U.S.C., providing in effect that any person or persons in connection with "any matter with the jurisdiction of any department or agency of the United States who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or representation, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined no more than \$10,00 or imprisoned not more than five years, or both."

Signature of Applicant

To be filled out by person filing application on behalf of a minor, incompetent or other person unable to file his own application:

Name _____

Address _____

Relationship to applicant _____

Reason you are filing on behalf of applicant _____

PROPOSED ROLL FORM

NAME AND LOCATION OF TRIBE

Roll No. Basic	New	Name	Sex	Date of Birth	Degree of blood of the tribe	Family Relation- ship	Residence	Relationship to Ancestor on basic roll (Give name and number)
1	5	Doe, John	M	12/15/09	1/2	Head	Route 1, Cherokee, North Carolina	Grandson - Mary Doe, Basic Roll #15

Note: When compiling a roll, 14" by 8 1/2" paper should be used.

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 - (a) Schedule A. Statement of Tribal Fund Balance and Income
 - (b) Schedule B. Tribal Programs
 - (c) Schedule C. Detail of Personal Services
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TRIBAL BUDGET - U. S. TREASURY TRIBAL FUNDS

9.1 Tribal Budgets.

- A. Objectives. To develop plans for the more definite managerial responsibilities over the tribal estate. To provide systematic procedures for preparing and executing tribal budgets, as well as the means for reviewing and evaluating tribal programs in terms of costs and accomplishments.
- B. Scope. Because of the complexity and variations in procedure, operational requirements and responsibilities that apply to budgeting for Indian tribal funds, it is necessary that the Bureau manual contain two parts. The primary difference between the two parts is that one relates to tribal funds on deposit in the United States Treasury, whereas the second part relates to funds on deposit in local tribal depositories such as banks, or Indian Service Disbursing Agent accounts when authorized.

9.2 Authority. Authorization to expend tribal funds held in trust for Indian tribes in the United States Treasury is contained in annual appropriation acts and/or in special acts of Congress for certain tribes.

9.3 Policy.

- A. General. Tribal budgets should be prepared under specific plans for carrying out tribal programs in a manner which will require economy as well as efficiency and will provide proper and adequate measures of control.
- B. Estimates. Tribal budget estimates should be based on accurate forecasts of costs in terms of personnel, materials, supplies, services and equipment. Although some tribal expenditures do not require specific appropriations by the Congress, all require review or approval of the Secretary. (See Illustration 1). Budgets requiring Departmental or Bureau approval will not be effective until approved.
- C. Tribal Participation. Tribal participation in developing budgets need not be limited to officers of the governing body. Wherever possible, various portions of the budget

TRIBAL BUDGET - U. S. TREASURY TRIBAL FUNDS

should be developed by tribal committees or sub-committees with responsibility for administering such programs. Final review and approval of the budget estimates shall be the responsibility of the governing body.

9.4 The Budget Process.

A. Introduction. This section describes at some length the tribal budget and appropriation process to provide an understanding of the Bureau's tribal budget procedure. Area Directors may issue instructions to the operating level, implementing the instructions contained herein to the extent necessary to fit particular conditions or facilitate the budget process at the local level.

B. Appropriation Structure (For Tribal Funds in the United States Treasury). The tribal fund authorization text, appearing in the annual Interior Department Appropriation Act covers three types of authorizations under which tribal funds on deposit in the United States Treasury may be expended. They are:

- (1) Permanent Authorization. Expenditures under this type of authorization are governed by special Congressional legislation authorizing the expenditure of tribal funds for specific purposes. (See Illustration 1)

The annual Interior Department Appropriation Act, under the appropriation heading "Tribal Funds" contains the statement "In addition to the tribal funds authorized to be expended by existing law, there is hereby appropriated _____" (underscoring supplied). That portion of the statement which is underscored refers to Permanent Authorization. Although expenditures under this authorization do not require annual Congressional action, prior approval by the Secretary of the Interior, or the Commissioner of Indian Affairs, is required.

TRIBAL BUDGET - U.S. TREASURY TRIBAL FUNDS

Tribal funds under the Permanent Authorization may be allotted for disbursement under regulations governing the expenditure of gratuity funds or the allotments may provide that the funds may be advanced to tribes for disbursement through bonded tribal treasurers or Indian Service Disbursing Agent accounts. The method of disbursement is sometimes covered by the language of specific legislation relating to certain tribes.

Allotments for expenditures or advance under authorities of the Permanent Authorization activity are identified by Account 2651 in the Bureau's regular chart of allotment accounts (42 IAM 5.8).

Allotment requests and the allotment document should cite the legislation under which expenditures are authorized. The Tribal Fund appropriation text merely recognizes authorizations in accordance with existing law in addition to Annual and Indefinite Authorizations. It does not alter in any way such existing legislation.

Examples of expenditures authorized under general Congressional legislation are as follows:

- (1) Per capita and other payments.
 - (2) Equalization of allotments.
 - (3) Education of Indian children in accordance with existing law.
 - (4) Payment of insurance premiums for protection of the property of the tribe against fire, theft, tornado, hail, earthquake, and other elements and forces of nature.
- (2) Annual Authorization. Expenditures under this authorization require annual Congressional action and are limited to the amount appearing in the annual Interior Appropriation Act under the appropriation

TRIBAL BUDGET - U. S. TREASURY TRIBAL FUNDS

"Tribal Funds". That part of the act beginning with "* * * there is hereby appropriated \$ * * * from tribal funds not otherwise available for expenditure for the benefit of Indians and Indian tribes, including pay and travel expenses of employees; care, tuition and other assistance to Indian children attending public and private schools (which may be paid in advance or from date of admission); purchase of land and improvements on land, title to which shall be taken in the name of the United States in trust for the tribe for which purchased; lease of lands and water rights; compensation and expenses of attorneys and other persons employed by Indian tribes under approved contracts; pay, travel, and other expenses of tribal officers, councils, and committees thereof, or other tribal organizations, including mileage for use of privately owned automobiles and per diem in lieu of subsistence at rates established administratively but not to exceed those applicable to civilian employees of the Government, relief of Indians, without regard to Section 7 of the Act of May 27, 1930 (46 Stat. 391), including cash grants; and employment of a recreational director for the Menominee Reservation and a curator for the Osage Museum, each of whom shall be appointed with the approval of the respective tribal councils and without regard to the classification laws: * * *", is the authority for use of tribal funds in the Treasury where specific legislation does not exist.

Allotments made under this Annual Authorization are available for expenditure for the purposes set forth in the annual portion of the appropriation text. Allotments and disbursements are subject to the same administrative regulations and procedures that apply to gratuity funds.

Funds allotted under the Annual Authorization text of the Tribal Funds appropriation are available for obligation on a fiscal year basis - from July 1 through June 30. Unobligated balances existing on June 30 of each fiscal year may not be obligated in the next fiscal year without reallocation.

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Funds cannot be advanced to a tribe under the Annual Authorization.

Allotments for expenditures are identified by 2652 in the Bureau's regular chart of allotment accounts. (42 IAM 5.8).

- (3) Indefinite Authorization. Expenditures under this authorization do not require further Congressional approval, but are limited as to purpose and amount only by the governing body of the tribe involved and the Secretary of the Interior as delegated to the Commissioner of Indian Affairs. That part of the appropriation act which reads, "* * * Provided, That in addition to the amount appropriated herein, tribal funds may be advanced to Indian tribes during the current fiscal year for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary: * * *" refers to Indefinite Authorization.

The purpose of this authorization is to make advances to those tribes who have demonstrated their ability to set up a tribal organization with the necessary staff to manage the funds advanced. Funds may be advanced to either bonded tribal treasurers or to the tribe in care of the Indian Service Disbursing Agents. Criteria and other conditions to be considered in advancing funds are covered in Section 9.4.D.

Although funds advanced under the Indefinite Authorization are identified with and authorized by a particular fiscal year's appropriation, the funds, once advanced to the tribe become classed as "Local Tribal Funds" and lose their identity as to fiscal year insofar as Federal Fiscal Year requirements are concerned.

Once advanced, the authority to expend and control the funds becomes a tribal responsibility.

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Allotments for advances to tribal treasurers or Indian Service Disbursing Agents are identified in the Bureau's regular chart of allotment accounts as 2653.

- C. Classification of Tribal Funds. As stated in Section 9.1.B., budgeting for Indian tribal funds is contained in two parts of the manual according to two main categories of tribal funds: (1) Tribal funds in the Treasury of the United States, and (2) Tribal funds in local depositories. Because the two categories are quite broad in character, a further breakdown is required to indicate the source and class of funds that make up the two categories.

Generally, there are five classes of tribal funds which must be considered from the standpoint of disposition and control. A description of each class follows under each of the categories mentioned above:

(1) Tribal Funds on Deposit in the United States Treasury.

These funds are derived from two main sources, generally:

- (a) Payments by the Federal Government to the tribe for lands ceded or other valuable consideration, usually arising out of a treaty, and,
- (b) Payments made to Federal officials and receipted for by them from lessees, land purchasers, or other private parties in exchange for some benefit, generally tribal land or interest therein.

The authority to disburse this class of funds is derived from (a) annual appropriation acts, or (b) special legislation having the force and effect of permanent appropriations of tribal funds for specified purposes. In either case, Congress is vested with complete power over the disposition of these funds and has vested administrative control in the Secretary of the Interior who in turn has delegated it to the Commissioner of Indian Affairs.

(2) Tribal Funds Held in Local Tribal Depositories.

(Local Tribal Funds). Generally, there are three classes of local funds. They are:

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- (a) These funds held in the treasury of a tribe which has become incorporated under Section 17 of the Act of June 18, 1934, or organized under Section 16 of that act. Departmental power and the scope of such power with respect to such funds is bound by the provisions of tribal constitutions or charters. In the case of incorporated tribes, such Departmental supervisory powers are generally temporary.
- (b) Funds which an Indian tribe has derived from its own members or from third parties independent of the Federal Government's efforts or jurisdiction, as where tribal authorities hold a fair, or dance and charge admission. Federal Government exercises no control over these funds.
- (c) Provisions of annual Interior Department Appropriation Acts and special acts for specific tribes make available the third class of local funds. These funds are usually referred to as advanced funds. They are tribal funds originally held on deposit in the United States Treasury, but are transferred or advanced to local tribal depositories through provisions of special permanent acts for specific tribes and the annual appropriation acts under the Indefinite Authorization.

Prior to advance, such funds are controlled by Congress, the Commissioner of Indian Affairs (as delegated by the Secretary) is vested with the power to approve as to purpose and amount, such amounts as are similarly approved and requested to be advanced by tribal governing bodies.

Once advanced to local tribal authorities, the authority to expend and control the funds becomes a tribal responsibility. Bureau and Departmental responsibility is advisory.

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- D. The Budget Estimates. Budget estimate schedules as required herein will (1) serve as the vehicle for presenting to the Commissioner of Indian Affairs the recommendations of the tribal governing bodies as to their needs for tribal funds to cover designated purposes; (2) indicate to Congress the amount of receipts and balances to be authorized to cover proposed expenditures as designated and approved by tribal governing bodies and the Secretary; and (3) serve as the medium for the exercise of internal controls in the use of the funds and the purposes designated.

The instructions which follow apply to budget formulation and execution for funds belonging to tribes on deposit in the United States Treasury.

- (1) Fiscal Year. Budget schedules will be prepared on a fiscal year basis, i.e., July 1 through June 30. The instructions which follow are intended to apply to any budget year. Therefore, for instructional purposes, the schedules and the narrative will designate fiscal years by the following letter groupings:

PY will refer to the Past Year (actual)
CY will refer to the Current Year
BY will refer to the Budget Year

In preparing the budget schedules, do not use the letter designations. Budget submissions must indicate the actual numerical fiscal year designation applicable to the budget estimates.

- (2) Call for Estimates. (Central Office). Each year the Central Office will issue a memorandum calling for the submission of tribal budgets in accordance with 42 IAM 3.3.4 (d). Complete budget estimates must be prepared and submitted so as to reach the Central Office by August 15. The call may contain special instructions or advice not covered in the manual.

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- (3) Contents of Tribal Budget Estimates: Tribal budget estimates will be prepared on forms similar to the schedules contained in Illustrations 2, 3, 4 and 5. The schedules are designed to reflect the following information for three consecutive fiscal years, viz, the past, current and budget years.
- (a) Schedule A. Statement of Tribal Fund Balance and Income.
- (1) Unobligated balance at beginning of year.
 - (2) Amount and source of income during the year.
 - (3) Total amount available during the year.
 - (4) Amount remaining available (unobligated) at the end of the year.
- (b) Schedule B. Tribal Programs.
- (1) Amounts obligated or estimated to be obligated for designated purposes under each of the three authorizations.

Permanent
Annual
Indefinite
- (c) Schedule C. Detail of Personal Services.
- (1) Listing of regular permanent positions and salaries.
 - (2) Amount programmed for other personal service costs.
 - (3) Net amount of annual personal service obligations.

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(d) Schedule D. Explanation of Tribal Programs.

This schedule is required to support and explain the tribal program for the budget year only under each type of authorization contained in Schedule B.

The explanation of the program is intended to clarify or justify the tribal program, in whole or in part as the case may be, to those individuals who must review or evaluate the tribal program as to scope, objectives, timeliness, desirability and other factors.

The schedule provides that proposed expenditures under the Permanent Authorization be supported by reference to such general or specific Congressional acts which authorize expenditures without annual authorization by Congress.

(4) Detailed Instructions for Preparation of Budget Schedules. The following detailed instructions are intended to serve as a guide in the preparation of each of the four schedules comprising a budget submission.(a) Schedule A. Statement of Tribal Fund Balance and Income.

Heading. The heading is self-explanatory requiring identification of the tribe whose funds are involved, the name of the reservation, the name of the Agency or other Bureau facility having jurisdiction over the tribe, and the name of the Area under whose jurisdiction the Agency belongs.

Column 2. This column represents actual data available from Bureau records for the past year. Information under this column must be obtained for each of the items relating to the tribes' fund balances and income reported in Column 1.

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Columns 3 and 4. These two columns represent estimates for the current year and the budget year for the items in Column 1 affecting the tribes' fund balances and income for these two years.

Since Column 3 represented budget year estimates in the previous year's schedule, the amounts should be brought up-to-date to reflect the most recent and reliable data available for the current year.

Line 1 - Unobligated Balance at Beginning of Fiscal Year. The amount for the past year (Column 2) is derived from the Bureau's June 30 accounting (operating) statement. This amount appears after the account title "prior year balance available", and will include the sum of the prior year's unallotted and unobligated balances.

The amounts for Columns 3 and 4 will be similar to the amounts appearing opposite Line 7 for Columns 1 and 2, respectively.

Line 2 - Source of Income. Lines 2a through 2f will include different sources of revenue or income deposited in the tribal accounts in the United States Treasury. (The sources appearing in the schedule are examples only).

The sources and amounts for Column 2 are obtainable from that part of the Bureau's June 30 accounting (operating) statement relating to Source of Revenue. The amounts in the "Cost to Date" column of this statement will be used.

The amounts for Columns 3 and 4 should represent the best estimates possible for each of these two years as to the source and amount of anticipated revenues.

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Line 3 - Adjustment to Actual Collections. This adjusting entry will be used for the past year (Column 2) only if necessary. It will be used only when the total amount of revenue as reported on the Bureau's June 30 tribal revenue statement (as applied under Line 2 above) differs from the amount shown for the fiscal year collections shown on the first line of the first page of the Bureau's June 30 operating statement. The latter amount must be used in order to reflect correctly year-end balances. Therefore, since the Bureau's revenue statement reflects amounts on a "billed" basis, which may or may not equal actual collections, either a plus or a minus entry will be entered on Line 3 to make the amount of Line 4 correspond to the actual collections shown on the first page of the June 30 operating statement.

Line 4 - Sub-total, Annual Collections. This is the total of Lines 2 and 3, representing actual collections deposited during the past year and estimated deposits in the current and budget years.

Line 5 - Total Amount Available. Total of Lines 1 and 4. These amounts represent the amount that was available for expenditure during the past year and the amounts estimated to be available in the current and budget years for programming purposes.

Line 6 - Total Amount Programmed (minus entry). This entry represents the amount that was actually obligated for the past year and the amounts estimated to be obligated in the current and budget years. The amounts shown here for all three years are the "Grand Total" amounts shown on the last page of Schedule B. The amount for the past year (Column 2) should be the same as the amount reflected on the first page of the June 30 operating statement opposite the account titled "Obligations Incurred".

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Line 7. Balance Available in Subsequent Year.
These amounts represent the balance of tribal funds remaining unobligated at the end of each fiscal year. The balance is composed of (1) the unallotted balance in the United States Treasury, plus (2) the unobligated balance remaining on the Bureau's allotment ledger accounts as of June 30. The amounts are obtained from the Bureau's June 30 tribal operating statement opposite the entry Balance Available: (1) in subsequent years, (2) Unobligated allotments. The amounts also should be the difference between Line 5 and Line 6 of Schedule A.

The amount for the past year is carried forward to Line 1 of the current year column and Line 7 of the current year column as shown opposite Line 1 of the budget year column.

For the current and budget years, these amounts, plus the estimated revenues should serve as a guideline for future programming. Tribal programs may not exceed in any one year the total amount available shown on Line 5.

(b) Schedule B - Tribal Programs.

- (1) General Instructions. Tribal Programs will be reflected on Schedule B. The schedule is intended to show for three consecutive fiscal years, actual and estimated costs and obligations for various activities performed with tribal funds within each of the three consecutive fiscal years, actual and estimated costs and obligations for various activities performed or to be performed with tribal funds within each of the three types of authorizations mentioned in the annual Interior Department Appropriation Act (See Chapter 9, Section 4.B, Appropriation Structure).

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This section of the manual relates only to the mechanics of reflecting the plans in prescribed format and making the funds available once tribal program plans have been established and recommendations made.

Care should be taken to choose the correct or appropriate type of authorization before preparing Schedule B. For those tribes having special legislation, usually their budgets will be reflected under the Permanent Authorization. For other tribes who do not operate under special acts of Congress, budgets will be prepared primarily under the Annual or Indefinite Authorization. The use of the Permanent Authorization by the latter group of tribes is restricted to the use of the tribal funds for per capita and other payments, equalization of allotments, education of Indian children in accordance with existing law where legislative authority for the use of their funds for such purposes existed prior to the Act of May 18, 1916, supra, and for payment of insurance premiums for protection of tribal property, etc.

Funds will not be advanced to tribal treasurers or Agency disbursing agents under the Permanent and Indefinite Authorizations unless certain criteria are set. These criteria are set forth in Section 9.4.D under Indefinite Authorization.

- (2) Programs Under the Permanent Authorization. Tribal expenditures applicable for programming under the Permanent Authorization are set forth in Chapter 9.4.B. The funds are made available for expenditure by (1) Bonded tribal treasurers, (2) Indian Service Disbursing Agents, (3) Regional Disbursing Offices, or (4) A combination of the preceding three.

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Criteria for making funds available under the Permanent Authorization will be similar basically to procedures permitted under the Indefinite Authorization, except that disbursements through Regional Disbursing Offices are disbursed under the Bureau's supervision and within Federal regulations.

Listing of Program Activities. The purpose which the tribe desires funds to be authorized for expenditure should be listed in the left hand column under "Program Activities" under three headings as follows:

- (a) Funds authorized to be expended under general legislation.
- (b) Funds authorized by special acts of Congress for certain tribes.
- (c) Funds authorized under (b) above, but limited to tribal activities disbursed through Regional Disbursing Offices under Bureau supervision.

Further breakdowns within each of the headings should be made if such breakdowns will help in the process of budget formulation and/or review and evaluation of the program. Since the Secretary must review and approve tribal expenditures under the Permanent Authorization, the budgetary breakdown should be detailed enough to provide sufficient information for proper review.

The narrative explanation of the program as required by Chapter 9.4.D, as well as supporting resolutions explained also in Chapter 9.4.D, may provide the means for supplementing information not available in Schedule B.

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Funds should be disbursed through Regional Disbursing Offices when the control of expenditures is exercised by the Bureau and when it is necessary to discharge properly the Bureau's responsibility by maintaining control of positions and expenses.

Personnel paid from such tribal funds thus advanced are employed subject to the rules and regulations of Federal classification laws, unless otherwise excepted under law.

- (3) Programs Under the Annual Authorization. Tribal expenditures under the Annual Authorization are set forth in Chapter 9.4.B and are subject to the same rules and regulations as apply to gratuity funds. When a tribal budget has been reviewed and approved by the Secretary for a given fiscal year, any funds in the budget not obligated as anticipated are not available for obligation the following year until such balances are included in a new annual budget and such budget is reviewed and approved by the Secretary. The availability of unobligated balances in a new budget is automatic in that all balances remaining at the end of a fiscal year are returned to the unallotted tribal account and may be authorized as required in subsequent years.

Listing of Program Activities. The purposes for which the tribe desires funds to be authorized under the Annual Authorization should be listed in the left column under "Program Activities" under two main categories as follows:

1. Capital Expenditures
2. Operating Expenses

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Under Capital Expenditures should be listed the various types of expenditures for major equipment and real property which cannot be considered as operating expenses. Examples of such expenditures are listed in the sample copy of Schedule B, page 1. (See Illustration 3).

A major item of equipment for the purpose of this section is defined as a movable item costing \$50 or more and/or as indicated on the Bureau's major equipment list (those items capitalized on the list). An item of equipment is further defined as an object that is not consumed or used in such a manner as to lose its identity or its original characteristics, such as an automobile, a desk, or a movie projector.

Operating expenses should be reflected on a functional performance basis. The functions should conform as closely as possible to the primary activities contained in the Bureau's appropriation activity structure. However, the tribal activities listed need not be limited to Bureau activities. There are many tribal activities for which the Bureau does not have a comparable activity within its appropriation structure.

One line items are suggested for each major activity such as Welfare, Law and Order, Tribal Administration, Compensation and Expenses of Attorneys, etc.

The activity structure of the tribal program under the Annual Authorization should be selected with care. In selecting the activities to be shown, it must be borne in mind that tribal cost accounts must be developed by the tribe's jurisdictional accounting office to accumulate costs under

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each of the activities selected. (The accounting office will then make periodic reports showing the cost to date for each budgetary activity selected). Bureau cost accounts may be developed at the accounting office level to make available such additional cost detail below the primary activity level as is necessary to facilitate program execution. However, such cost detail should be kept at a minimum. Areas should not attempt to create cost data in the detail prescribed under the Bureau's cost system for each of its appropriation activities.

- (4) Programs Under the Indefinite Authorization. The authority and major purpose to expend funds under the Indefinite Authorization are set forth in Section 9.4.B.

This provision of the annual Interior Department Appropriation Act is a good one and it is urged that as many tribes as possible take advantage of it, but in a manner and for the purpose for which it was intended. In approving advances under the Indefinite Authorization, it is not the intent of the Commissioner to use this appropriation provision merely as a means to transfer funds from the Regional Disbursing Office accounts to Indian Service Disbursing Agent accounts or to bonded tribal treasurer accounts. Requests for advance of funds must be thoroughly justified on the basis that the advance will not be merely a convenience, but a distinct advantage.

As stated earlier, once the tribe's funds are transferred from the United States Treasury to local depositories, the funds are classed as local tribal funds and the power to expend and control the funds becomes a tribal responsibility. However, this does not mean that

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tribes may proceed to disburse the funds in a manner that does not conform to the budget as approved by the Secretary. Tribes operating under approved constitutions and bylaws are required to maintain adequate and proper accounts under their control, including the preparation of financial reports and the procurement of audits. However, to insure that the funds advanced are expended in accordance with the budget as approved by the Secretary, funds will be advanced upon the condition that, when and if necessary, the Bureau be permitted to audit the tribe's accounts.

Should it develop that funds advanced are not being expended in accordance with the condition of approved programs, the Secretary may not approve subsequent requests for advances until action has been taken to correct whatever malpractices or inadequacies are involved for past advances.

An accumulative balance will not be permitted to build up in the local tribal accounts as a result of advances. Where a balance remains at the end of an operating year due to savings or other circumstances, the balance should be reprogrammed to apply against the subsequent year's budgetary program thereby reducing the amount of new funds required from the United States Treasury balance to finance the next year's program.

Funds advanced to local depositories may not be returned to the account of the tribe in the United States Treasury. Funds requested for advance to tribes should be included in the tribal budget by purpose or major activity in the left column of Schedule B under "2653 - Indefinite Authorization." The activities and amounts shown on Schedule B should be shown on local tribal fund budgets as deposits. The

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activities or functions for which the funds are advanced should be descriptive enough to indicate the purpose for which the funds will be used. The activities listed may be explained further in Schedule D.

- (5) Criteria for Advancing Funds to Local Depositories. In order to insure the proper use of tribal treasury funds in relation to the Secretary's responsibilities toward such funds as required of him under law, it is necessary that certain conditions be met before he will consider approving and releasing the funds to tribes. These conditions are set forth below and are to serve as criteria to be considered before approval will be granted to advance funds to local depositories under the Permanent and Indefinite Authorizations.

- (a) For Advance to Tribes for Disbursement Through a Bank. When advances are to be made to tribes for disbursement through a bonded tribal treasurer or other authorized tribal official, a tribe must have a "governing body" acceptable to the Secretary of the Interior. To be acceptable to the Secretary, a "governing body" must be a duly elected body authorized by the tribal membership to represent and act for the tribe. All tribes organized under the Indian Reorganization Act meet this requirement. However, tribal governing bodies acceptable to the Secretary are not limited to those of Indian Reorganization Act tribes.

Have a bonded tribal official authorized to accept and disburse funds belonging to the tribe which are available locally. The amount of the bond should be stated.

Present a budget prepared pursuant to the instructions contained herein.

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Present a plan of operation setting forth the purposes for which the advance is requested. The plan of operation should include but need not be limited to (a) the major purposes correlated to the budget, (b) a brief outline of the procedures established to account for, disburse, and control the funds advanced, (c) the name of the tribe's depository, and (d) a provision for audits by public accountants.

Once a plan has been presented and approved, it need not be resubmitted each year to support subsequent years' budgets and advances provided there is no major change in the budget request or the plan itself. Plans of operation may be composed of one major plan for small operations or more than one for larger programs. Special plans may be developed to cover a particular program which is non-recurring in nature. All plans, however, should tie into a unified and regulated system of internal tribal control.

Plans of operation for smaller functions confined to non-enterprise activities may be incorporated into and made a part of the tribal resolution authorizing the request for cash advances. In such cases the plan must be repeated each time an advance is requested.

- (b) For Advance to Tribes for Disbursement Through an Indian Service Disbursing Agent Account. When advances are to be made to a tribe for disbursement through an Indian Service Disbursing Agent, the following criteria are set forth:

- (i) The tribe must have a "governing body" acceptable to the Secretary of the Interior,

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- (ii) A budget must be prepared pursuant to the instructions contained herein, setting forth the purposes for which the advance is requested if the workload cannot be absorbed by the existing staff.
- (iii) A plan must be presented indicating (1) the tribe's responsibility for carrying out the proposed program including the certification responsibilities of tribal officials in connection with disbursement of the funds, (2) the manner in which the funds will be accounted for and controlled including any records to be maintained by tribal officials and tribal employees, and (3) a statement from the tribe regarding the tribe's plan for auditing the tribal accounts by public accountants.
- (iv) A statement from the Area Director or his authorized representative should be submitted indicating (1) the effect the advance will have on the workload of the present staff, (2) whether or not Federal employees are or will be involved in the workload and if so to what extent, and (3) whether or not tribal budget includes funds for the necessary personnel to cover the full workload, or just a part of it.

In connection with advances to tribes to be disbursed through Indian Service Disbursing Agent accounts, Section 9.7.A4 outlines guidelines to be used in work assignments and funding arrangements of personnel involved in the workload created by such advances.

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- (6) Amounts to be Reported on Schedule B for All Activities. As indicated on the sample copy of Schedule B, sub-totals will be shown for obligations of (1) the Permanent Authorization Account 2651, (2) capital account and operating expenses under the Annual Authorization Account 2652, (3) Indefinite Authorization Account 2653, and (4) a grand total of all budget activities.

The grand total amounts must be shown opposite Line 6 of Schedule A, Statement of Tribal United States Treasury Fund Balances and Annual Income.

- (a) Past Year Column. The amounts for the past year column will indicate the actual amounts that were obligated for each type of authorization. The grand total amount must be the same as the "obligations incurred" amount reflected on the Bureau's fiscal June 30 operating statement. The actual amounts to be reflected for each activity and function will conform to the amounts appearing in the June 30 operating statements. This means that the amounts disbursed through the Regional Disbursing Office under the Permanent Authorization will be on an accrued expenditure basis. In order to reconcile the total accrued expenditures to obligations, it will be necessary to insert an adjusting entry at the end of the Annual Authorization activities. This amount may be either a plus or minus entry. This entry should be titled "Reconciliation of Accrued Expenditures to Obligations."
- (b) Current and Budget Year Columns. The amounts for these columns will represent the budget items requested to be authorized by Congress and/or approved by the Secretary of the Interior.

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The current year program amounts should reflect the latest and most up-to-date estimates available to the tribe.

- (c) Schedule C - Detail of Personal Services. Schedule C is required for the purpose of making available up-to-date information regarding the number, type and grade of positions being financed or are proposed to be financed from tribal funds on deposit in the United States Treasury. The schedule will include salaries and wages of positions paid through the Regional Disbursing Office. Tribal positions, financed by local tribal funds (including advanced funds) are to be reported on the schedules prescribed for local tribal funds and such positions will be excluded from Schedule C.

No detail is required for part-time and temporary positions. A lump sum amount should be reported for this class of personal services.

The past year column of the schedule will be prepared at the Area Office level from personnel and payroll data available from Area Office records.

- (d) Schedule D - Explanation of Tribal Program. The explanation of the tribal program schedule is intended to elaborate on or clarify the tribal program in whole or in part as the case may be on matters or budget proposals which are not fully covered in the preceding three schedules.

Generally, a short statement should be made as to why each particular authorization was selected for requesting the funds. The sample Schedule D (Illustration 5) includes a few general statements that should be made a part of the narrative explanation. Other pertinent statements may and should be included where applicable as for example, whether a plan of operation is in existence and whether or not the budget request for advances under the Indefinite Authorization necessitates a change in the plan.

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The program explanation may omit any pertinent information which duplicates similar material covered in a resolution supporting the budget year program.

- (e) Supporting Tribal Resolutions. The United States and the Indian tribe each have an interest in tribal funds which are held on deposit in the United States Treasury. It follows, therefore, that the common consent of the tribe and the Federal Government should be given in disposing of such funds. The usual medium by which a tribe expresses its willingness to the use of its funds for the purposes specified is the resolution. The Federal Government's consent is evidenced by approval of tribal budgets and the allotment of funds.

A tribal resolution should be obtained to support expenditure of tribal funds under budgets approved by either the Congress and/or the Secretary of the Interior. The resolution covering the budget year program may or may not accompany the completed estimates. It may not be possible or feasible without special expense, to have tribal governing bodies give formal approval of budget year estimates before the submission date. In such circumstances, the resolution may follow at a later date. However, the resolution should be available before the funds are expended. There is usually a time span of about eighteen months between the time a budget is required to be prepared and the time the money becomes available for expenditure. Nevertheless, for purposes of reviewing the tribal financial program it is essential that we have the official tribal resolution as soon as possible if it cannot be submitted with the budget so that there will be no misunderstandings about the tribe's budget.

The resolution should always refer to a particular fiscal year budget.

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A modifying or amending resolution to an original budget resolution is necessary when a tribe desires to change or modify a tribal budget. Such a resolution is required to be submitted to the Central Office under the following conditions:

- (1) Where a major change or changes occur within the original amount of the budget.
- (2) When the tribe desires to change the type of authorization under which it plans to operate (as for example, from the Annual to the Indefinite).
- (3) When the budget is increased above the amount originally approved.

Six copies of budget resolutions, including modifying or amending resolutions referred to above, are transmitted to the jurisdictional Area or other comparable Field Office. Three copies are forwarded to the Central Office and three retained in the Area Office.

Unless specifically required by tribal constitutions and bylaws or special acts, Area Offices need not approve resolutions. Such offices, however, are required to review the resolution as to purpose and intent and forward them to the Central Office with whatever recommendations deemed advisable under the circumstances.

If resolutions required to be transmitted to the Central Office need other Area Office actions, that action should be taken. An example of this is where a change in allotment is required. The Area Office in such circumstances will prepare the necessary allotment request form and forward it to the Central Office, together with the resolution for final action.

Only organized tribes under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), have authority to prevent the expenditure of their funds without

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their consent. The veto power of such organized tribes does not apply to gratuity appropriations by Congress. For further reference see Section 16 of the Act of June 18, 1934, supra.

Generally, Congress has the power to authorize an appropriation of tribal funds without the consent of the tribe. Therefore, consent of tribal officials (by resolution or otherwise) need not be obtained prior to action by Congress on a proposed tribal budget. Exceptions to this is where there is general and specific tribal legislation authorizing expenditure of tribal funds without further Congressional action.

Action of a tribe in forbidding use of appropriated tribal treasury funds is necessarily prospective in character. The validity of disbursements already made cannot be impugned. Whether a tribal resolution is effective to prevent a later disbursement, or whether the disbursement may be justified on the ground that action was undertaken before the resolution, must be determined with reference to the particular facts of any situation and the approved organic documents of the tribe. A tribe organized under the Indian Reorganization Act, in seeking to prevent an expenditure of tribal funds, may act either by formal resolution properly transmitted to Departmental officials or by the institution of court proceedings.

If such an organized tribe whose funds require Congressional action before expenditure has agreed to a given disposition of tribal funds recommended by Congress, whether or not the tribe was organized at the time, it is stopped thereafter from objecting to such disposition. Conversely, if such organized tribe has objected to a particular disposition of tribal funds prior to

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Congressional appropriation, such objection continues in force. In such circumstances, Federal officials may not disburse appropriated tribal funds without positive authorization from the tribe.

The area surrounding the management of tribal funds is varied and complex and no set of rules or procedures can cover all tribes. It must be remembered, therefore, that in administering tribal funds, the Secretary of the Interior, by law, has been delegated broad powers of authority for the management and protection of the Indians' resources. In discharging his responsibility, he must reserve the right to exercise certain judgments regarding the use and disposition of tribal assets and the exercise of this judgment may or may not follow a set pattern of circumstances or procedures.

- 9.5 The Appropriation Process. The budget schedules described in the preceding chapters are the initial stages of a tribe's participation in the legislative appropriation process. After the schedules are received in the Central Office, they undergo several transformations before they are finally acted upon by the Department of the Interior, the Bureau of the Budget, the two bodies of Congress, and the President of the United States.

In the appropriation process, the tribal budgets become a part of the total budget document of the Bureau of Indian Affairs. As such it follows the same route as the Bureau's regular non-tribal budgets. Since the progressive stages of the Bureau's budget processes are set forth in 42 IAM 3, only a recapitulation of the legislative stages will be stated here. They are listed in chronological order from the initial tribal stage to the final appropriation act.

Tribe
Field Installation
Area Office
Central Office
Department
Bureau of the Budget
House Sub-Committee on Appropriations

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Floor of the House
Senate Sub-Committee on Appropriations
Full Committee of Senate on Appropriations
House and Senate Conference Committees (final report approval)
President of the United States for Signature
(Enacted into law under the appropriation title "Tribal Funds")

As stated earlier, only tribal funds under the Annual Authorization require Congressional approval. It is possible, therefore, to request funds under either the Permanent or Indefinite Authorization at any time regardless of whether or not such requests are or have been included in the Bureau's budget estimates to Congress. Authority for approving expenditures under these two authorities has been delegated to the Secretary of the Interior by various statutes and he may authorize expenditures under the conditions and within the limitations provided in these various statutes. In so doing, however, the allotment of funds under either authorization is identified to the fiscal year in which issued, and the tribe and the Bureau reports the expenditure of the funds by means of the budget schedules described in this chapter. They are reported in the past year column of Budget Schedule B.

- A. Tribal. Tribal participation in the formulation of budget estimates will vary from tribe to tribe. This variance may be due to statutes, location in relation to Bureau facilities, the tribal organization, tribal attitudes or the scope and complexity of the tribal program.

Generally, since expenditure of tribal funds in the Treasury ordinarily requires the consent of duly elected and recognized tribal governing bodies, the Bureau expects the tribes to exercise good judgment in recommending approval and programming of tribal funds, both as to purpose and amount. The extent of tribal participation should be commensurate with the ability of the governing body to manage properly tribal funds entrusted to its care. As tribes gain more experience, they will be expected to assume more and more responsibilities in the technical fields of budget formulation.

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Tribal officials should attempt to familiarize themselves as much as possible with the Bureau's accounting reports. The information contained in the reports reflect currently the financial status of the tribal programs as the operations progress from month to month. The more tribal officials understand their day-to-day operations by reviewing and evaluating operating reports, the more successful they will become in developing future programs and the budgets to finance those programs.

- B. Reservation Federal Facility. Superintendents and Bureau personnel at the operating level will be expected to give the tribe assistance in the compilation of the more technical aspects of the various budget schedules. They will be responsible for completeness of the budget documents as called for by the Area Office. This will include proper format, accuracy of the data appearing on the schedules, applicability of the use of the types of authorization under which the funds are requested, and in general any other assistance which will result in a complete and well-balanced program budget.

The extent and degree of Bureau participation will depend upon such factors as the distance of the tribe from a Field Office which may affect the extent of consultative relationships between the tribe and the Bureau, the ability of tribal officials to manage their funds, including an understanding of the budgetary procedures involved in making those funds available, the magnitude and complexity of the proposed programs, and the time permitted to complete the estimates.

Since the preparation of tribal budgets covering tribal treasury funds is a Federal process, the final responsibility rests with Bureau officials in seeing that the budgets are prepared in accordance with established procedures and submitted in time to meet the date set for submission to the Area Office.

Agency Superintendents are expected to review and evaluate carefully the budget proposals of tribes under their jurisdiction. This review should be made with the understanding that the Secretary of the Interior must exercise

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certain judgments and prerogatives in approving tribal requests for funds for the purpose of executing properly their responsibilities under various statutes for the protection of tribal assets.

Each tribal budget should include a short and concise narrative statement by the Superintendent or other officer in charge outlining his viewpoint and recommendations on the budget and the programs proposed therein, as they relate to (1) the Bureau's social services, (2) the use and ownership of land and other physical resources, and (3) the Indian's assumption of responsibilities.

- C. Area Office. Area Office staff will transmit the budget estimates to the Central Office in accordance with the instructions contained herein and as supplemented by special instructions contained in annual calls for estimates.
- D. Central Office. The Central Office will issue an annual call for the submission of the budget estimates indicating the final date for submission. If it becomes necessary to select a different date from the one prescribed herein, it shall set the new date desired. If the submission date is set forward from the date contained herein, the annual call should be issued sufficiently in advance so as not to disrupt the standard time schedules Area Offices may set as a result of this manual release.

The Central Office will be responsible for the preparation of all tribal budgets for those tribes not assigned to a field installation.

In addition, the Central Office will (1) consolidate all field submissions as required, (2) prepare the various schedules and documents required by the Bureau of the Budget Circular A-11, as modified, or as requested by the Division of Administration, (3) from data obtainable from the budget submissions for both Treasury and local funds, prepare any supplemental data or tabulations that may be required by the Secretary, the Commissioner, and the Deputy or Assistant Commissioners, and (4) approve and issue allotment advices pursuant to the applicable provisions of the Indian Affairs Manual.

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The Commissioner of Indian Affairs and his immediate staff are responsible for final policy and program proposals and determinations reflected in the tribal budget estimates. Any tribe whose estimates reflect a deviation from such policies or other determinations shall be notified as soon as possible, but in no event longer than 90 days after receipt of the tribe's budget. Such notification shall be transmitted to the tribe through the Area Director and shall include statements relating to (1) the policy or other recommendations involved, (2) that portion which is in conflict with such policy or recommendations, (3) the factors involved, statutory or otherwise, leading to the disagreement, and (4) the Commissioner's recommendations for solution of the problem on such other alternatives as he may prescribe.

9.6 The Allotment Process.

- A. General. Upon enactment of the Interior Department Appropriation Act, tribal funds authorized under the act become available for allotment to the field accounting offices. The document used to allot funds is Standard Form 5-750, headed Advice of Allotment. (See Illustration 6). It is issued by the Central Office.

An approved Advice of Allotment serves two main purposes: (1) it serves as the legal authority to obligate tribal funds in the amount specified on the form under each of the three types of authorizations contained in the tribal funds appropriation language, and (2) it serves as an accounting document of an action taken affecting the balance of a tribe's funds on deposit in the United States Treasury.

- B. Allotment Action by the Central Office. The Central Office issues the initial advice of allotment. The initial advice of allotment should meet the following requirements:

- (1) It should identify the tribe.
- (2) It should identify the funds by symbol and title as they are carried on the books of the Treasury.

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- (3) It should indicate the fiscal year in which the funds are applicable.
 - (4) It should indicate the amount authorized under each of the following types of authorizations:

2651 - Permanent Authorization
2652 - Annual Authorization
2653 - Indefinite Authorization
 - (5) It should indicate whether or not the tribe's program is approved in total or in part and if the latter, the amount and the reason for disapproval.
 - (6) Allotments made under the Indefinite Authorization will list the various purposes for which authorized and the amounts.
 - (7) Partial allotments will be explained, such as lack of funds, budget items disapproved, etc.
 - (8) Each allotment will make specific reference to (a) the tribal program involved, (b) the date and/or number of the supporting resolution. If a resolution is not of record, that fact will be stated, and (c) the citation of appropriate acts if the allotment is made pursuant to special legislation.
 - (9) Each advice of allotment will be numbered, dated, and approved in writing.
 - (10) Allotments made under the Permanent and Indefinite Authorizations for advance of funds to local tribal depositories will be effected so as to make the funds available for disbursement by tribal officials on July 1 of each year.
- C. Program Execution by the Area Office. Upon receipt of an approved program the Area Director shall notify the Superintendents and tribal officials of the program as approved.

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Ordinarily, the Area Office should not obligate a tribe's funds or take any other action that would result in the disbursement of a tribe's funds unless there is available and of record a tribal resolution supporting the budget and/or disbursement. This is the general policy even though the Central Office has approved the tribal budget and issued an advice of allotment for the program.

- D. Procedure for Advancing Funds to Local Tribal Depositories. To make the funds available to local depositories, funds will be advanced by means of Standard Form 1034 - Revised, Public Voucher, as follows:

For Advance to Bonded Tribal Treasurers. Such voucher is made out to the tribe in care of the Superintendent or other officer in charge. The authorized tribal official will sign for the tribe as payee.

The voucher will be supported by a copy of the resolution embodying the request for the advance of funds. A special or separate resolution is not necessary if the advance is covered in a previous resolution covering a tribal budget. The original of the resolution, however, must be manually signed and of record, not necessarily with each voucher. Otherwise, the document will be completed in the same manner as for other payments. Illustration 8 is an example of such a voucher payment.

For Advance to an Indian Service Disbursing Agent's Account. Such voucher is made out to the Bureau of Indian Affairs for the account of the tribe. The Superintendent or other authorized officer in charge will sign as payee. Otherwise, the voucher is completed in the same manner as for other payments. Illustration 7 is an example of such a voucher transaction.

9.7 Execution of the Tribal Budget.

A. Operating Responsibilities.

- (1) Bureau Functions. Where a tribe is financing a function which is basically a legal responsibility of the Bureau, employees performing the work of such function must be

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payrolled from tribal appropriated funds and organizationally responsible to the Bureau. Where such responsibility has been transferred to a tribe by statute or where there exists other legislation exempting this rule, the legal exception will govern.

- (2) Tribal Functions. The disbursement of and the accounting for funds advanced to local tribal depositories for activities or functions which are strictly tribal in nature is the direct responsibility of authorized officials of the tribe. Tribal authority over such funds and functions are set out in constitutions and bylaws, special acts for certain tribes, approved plans of operations and in some cases local tribal ordinances and resolutions.

The Superintendent or other responsible Federal official may only advise under such conditions. He should make himself available for consultation with tribal officials as the need arises on any administrative or operational problem for which they may seek advice.

The Superintendent should avail himself of every opportunity to keep himself informed of the tribe's progress in fiscal and program endeavors. His primary responsibility lies in the development and application of basic reservation programs for tribes, and local tribal enterprises may and should become a part of the overall reservation plan.

- (3) Bilateral Functions. An operation by its very nature may tend to cross organizational lines. In such circumstances, a plan of operation should be developed with lines of authority and responsibility, clearly defined and set out between the supervisory and clerical employees of the tribe and the Bureau. This is especially important where a ~~Bilateral~~ function is financed, in whole or in part, from local tribal funds obtained under the Permanent or Indefinite Authorization and possibly comingled with strictly local tribal funds.

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- (4) Indian Service Disbursing Agent Accounts. This is one example of a bi-lateral function. Because it affects most agencies who handle funds advanced for disbursement through the Indian Service Disbursing Agent, the following is offered.

One of the Bureau's primary responsibilities lies in the protection and safeguarding of tribal assets. Money is a tribal asset. When money is advanced to an Indian tribe to be disbursed through an Indian Service Disbursing Agent's account, the cash accounting for such funds becomes a responsibility of the Bureau, even though by administrative directive the funds become local in nature and are disbursed under a plan of operation supervised and handled by authorized tribal officials.

Payments made from such funds are authorized and approved by tribal officials and are paid by check against the tribal account of the Indian Service Disbursing Agent.

Besides the tribal accounts, most Bureau field facilities also maintain accounts for monies belonging to individual Indians. The handling of such funds has been always a Bureau responsibility. These funds also are deposited to and disbursed through the Indian Service Disbursing Agent's account. Thus, the combination of accounts comprising two distinct classes of funds becomes a workload entity usually referred to as IM accounts.

Usually, to obtain the most effective and efficient results in handling the work involved in this function, staffs are developed and the workload assigned on the basis of a single organizational unit. The size of the unit depends upon the volume of work. The volume of work in turn depends upon the number of active accounts.

The Bureau has acknowledged the work related to individual Indian monies as its first and primary responsibility in Indian Service Disbursing Agent accounting and has for many years obtained funds for payment of

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salaries and expenses of clerks assigned to the work from the gratuity appropriation, Resources Management, under the activity "General Trustee Services."

Under a normal workload developed over a period of years, a basic staff has been created. The addition of local tribal fund workload naturally affects this fixed staffing pattern. A budget problem develops when the workload becomes greater than the normal staff can handle and new funds to finance additional staff becomes a necessity. When this happens, action must be taken to overcome the problem.

Under such circumstances, the following guidelines should be observed:

- (a) In the assignment of workload to a basic ISDA staff (usually financed from gratuity appropriations), first consideration should be given to the individual Indian money accounts.
- (b) The basic ISDA staff may be utilized in handling tribal accounts, if such work can be absorbed without additional staff.
- (c) Should the workload created by the assumption of tribal accounting exceed the ability of the basic staff to handle, additional funds for more staff will be obtained from one of the following sources:

Tribal funds under the Annual or Permanent Authorization presently available. (RDO funds)

Tribal funds under the Annual or Permanent Authorization to be secured. (RDO funds)

Judgment should be exercised in the application of these guidelines.

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- (d) Where existing organizations and financing arrangements are effective and do not create supervisory and local administrative problems, they may remain as they are but every effort should be made to require that all such employees connected with Indian Service Disbursing Agents functions are Civil Service employees and pay-rolled from appropriated tribal funds.
- (e) There should exist well-defined lines of authority and responsibility in the execution of this function, keeping in mind the Bureau's responsibility as stated earlier.

B. Operating Guidelines.

- (1) Budget and Program Adjustments. Generally, the execution of tribal budgets should conform as much as possible to the original budget. Since there was a mutual agreement between the tribe and the Secretary as to the purposes and limitations for which the funds could be expended, there exists an obligation on both parties to conform to this agreement.

It is realized, however, that a considerable amount of time elapses from the time the budget is prepared and when the funds become available. Within this period, conditions or circumstances change or develop, causing a need or a problem not foreseen at the time the tribal budget was prepared. It is possible that such needs or problems if unresolved may result in a less effective or efficient operation. In the circumstances, in order to permit as much flexibility as possible in achieving better program results, budgeting and program adjustments may be made but within the following approval or review conditions.

- (2) For Funds Advanced to Tribes and Disbursed Through Local Banks. Tribes operating under the Permanent and Indefinite Authorizations with tribal funds advanced for disbursement through local banks may effect

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changes as to amount and purpose when such changes are minor and conform to the authorities and provisions of tribal charters, constitutions and bylaws, and not in excess of the total amount of the approved budget. The changes must be reasonable and shall not depart drastically from the original annual program budget as initially approved by the Secretary. Gross misuse of funds as to purpose and amount will be considered by the Secretary in reviewing future budgets and may serve as justification for disapproving further advances.

- (3) For Funds Advanced to Tribes and Disbursed Through Indian Service Disbursing Agent Accounts. Tribes operating under the Permanent and Indefinite Authorizations with funds advanced for disbursement through Indian Service Disbursing Agent accounts may effect changes under the same conditions as stated above.
- (4) For Funds Allotted Under the Permanent and Annual Authorizations and Disbursed Through Regional Disbursing Offices. Tribal operations involving funds of this nature are supervised by Bureau officials and the accounts maintained in accordance with procedures and regulations applicable to gratuity appropriations. Although adjustments need not be more restrictive than for advanced funds, there is a need for greater cooperation between Federal and tribal officials in order to maintain properly the budget and fiscal records and reports required under Bureau regulations.

Adjustments or proposed changes requiring an additional amount of funds over that which was originally approved must be submitted to the Central Office for approval. All other adjustments or changes may be made in accordance with authority delegated to the Area Director.

- C. Administrative Functions. General. The primary guideline to be used in administering the expenditure of tribal funds is whether or not the funds are classed as tribal treasury funds or local tribal funds in the sense that they have

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been described in the preceding sections of this chapter. However, there is a more relevant distinction. It is whether or not tribal funds are disbursed through Federal Regional Disbursing Offices as opposed to disbursements through local tribal depositories such as a bank or an Indian Service Disbursing Agent account.

All transactions involved in executing a tribal program when disbursements are through a Regional Disbursing Office will conform in every way to the regulations and procedures prescribed for the expenditure and control of Federal gratuity appropriations.

Transactions involved in executing a tribal program when disbursements are through a local tribal depository will be governed by local tribal regulations and procedures established independently by each tribe in accordance with charters, constitutions and bylaws, ordinances, resolutions, etc.

Generally, Federal employees paid from gratuity appropriations will not devote any time in performing housekeeping functions on tribal operations financed by funds in local tribal depositories. The same criteria applies to Federal employees paid from tribal funds disbursed through Regional Disbursing Offices. However, Civil Service employees will maintain the ISDA accounts of funds advanced in this manner.

This does not mean, however, that Federal employees should not advise or otherwise help the tribal officials and employees in a particular phase of their operations. The technical skills of Federal employees should always be made available to the tribe on an advisory basis when requested. Federal employees should and must give technical assistance within the limits of their regular duty responsibilities and time for the purpose of improving the effectiveness and efficiency of the tribal administrative organization.

A few examples of specific cases of tribal actions follow:

- (1) Property and Supply Functions. Federal employees will perform the property and supply services for tribes whose funds are being disbursed through Regional

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Disbursing Offices under either the Permanent or Annual Authorization. The services will be accomplished within regulations and manual procedures prescribed for Federal appropriations.

Tribal organizations operating with funds through local depositories must perform property and supply functions outside the Bureau's regulations and procedures. However, tribes may adopt procedures and apply practices similar to the Bureau's if they so desire.

The services available to Federal agencies such as discounts, wholesale prices, etc., may not be obtained by local tribal organizations unless they are obtained on the same basis that apply to other non-Federal organizations. As an example, an automobile to be purchased with local tribal funds may not be obtained through GSA. The purchase of the vehicle must be negotiated by the tribe direct with a private automobile company. The tribe may not claim the discount or tax exemption available to the Bureau on the basis that the tribal organization is a Federal organization. The automobile must be purchased in the name of the tribe, must be licensed under State laws, and may not be assigned Government license tags or other related Federal identification markers.

- (2) Fiscal - Accounting - Reports. The Bureau will maintain all accounts and make all necessary fiscal reports of tribal funds disbursed through Federal Regional Offices under either the Permanent or Annual Authorization as prescribed in the Bureau's Finance Manual.

No comments will be made here for funds advanced to tribes to be disbursed through a bank. Recommended fiscal records and reports for such funds will be the subject of an additional chapter.

When funds are advanced to a tribe for disbursement through an Indian Service Disbursing Agent account, a minimum of record keeping will be practiced. The ISDA

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account should be considered as playing the same role as a private bank. It merely records receipts and disbursements and maintains the correct current balance. The ISDA account should not be used as a substitute for an accounting system, but more or less of a depository control account. Subsidiary accounting records should be maintained by the tribe in whatever detail it may desire for management, budgetary control and reporting purposes with provisions for balancing to the ISDA Control account.

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ILLUSTRATIONS

1. Laws relating to tribal funds
2. Schedule A.
3. Schedule B.
4. Schedule C.
5. Schedule D.
6. SF 5-750
7. SF 103a - Payment to tribe for disbursement through ISDA
8. SF 103a - Payment of advanced funds to bonded tribal treasurer

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LAWS RELATING TO TRIBAL FUNDS

25 USC 123. Expenditure from tribal funds without specific appropriations.

No money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are continued in full force and effect: Provided, that this shall not change existing law with reference to the Five Civilized Tribes. (May 18, 1916, ch. 125, Section 27, 39 Stat. 158).

Cross References

Insurance for protection of tribal property authorized to be paid for out of tribal funds, see Section 123a of this title.

25 USC 155. Disposal of miscellaneous revenues from Indian reservations, etc.

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor,"

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and are made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by sections 123 and 142 of this title. (Mar. 3, 1883, ch. 141, Section 22; Stat. 590; Mar. 2, 1887, ch. 320, 24 Stat. 463; May 17, 1926, ch. 309, Section 1, 44 Stat. 560; May 29, 1928, ch. 901, Section 1, 45 Stat. 991.)

Reference in Text

Section 142 of this title, referred to in the text, was repealed by act May 29, 1928, ch. 901, Section 1, 45 Stat. 986, 992.

25 USC 161a. Tribal funds in trust in Treasury Department; rate of interest.

All funds with account balances exceeding \$500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum. (Feb. 12, 1929, ch. 178, Section 1, 45 Stat. 1164; June 13, 1930, ch. 483, 46 Stat. 584.)

25 USC 161b. Same; "Indian Money, Proceeds of Labor" fund; separate accounts for respective tribes; rate of interest.

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83 IAM 9
Illustration 1

All tribal funds arising under section 155 of this title on June 13, 1930, included in the fund "Indian Money, Proceeds of Labor," shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding \$500 shall bear simple interest at the rate of 4 per centum per annum from July 1, 1930. (Feb. 12, 1929, ch. 178, Section 2, as added June 13, 1930, ch. 483, 46 Stat. 584.)

25 USC 161d. Same; disposition of accrued interest.

The interest accruing on Indian tribal funds under sections 161a--161c of this title shall be subject to the same disposition as prescribed by existing law for the respective principal funds. (Feb. 12, 1929, ch. 178, Section 4, as added June 13, 1930, ch. 483, 46 Stat. 584.)

25 USC 123a. Tribal funds; use to purchase insurance for protection of tribal property.

The funds of any tribe of Indians under the control of the United States may be used for payments of insurance premiums for protection of the property of the tribe against fire, theft, tornado, hail, earthquake, or other elements and forces of nature, and for protection against liability on account of injuries or damages to persons or property and other like claims. (Apr. 13, 1926, ch. 118, 44 Stat. 242; Aug. 2, 1946, ch. 754, 60 Stat. 852.)

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Amendments

1946 -- Act Aug. 2, 1946, amended section to provide for the use of funds to pay premium on personal and property damage insurance.

25 USC 124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations.

No money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress. (May 24, 1922, ch. 199, 42 Stat. 575.)

25 USC 125. Expenditure of moneys of tribes of Quapaw Agency.

No moneys shall be expended from tribal or individual funds belonging to the Quapaw or other tribes of Indians of the Quapaw Agency in the State of Oklahoma without specific authority of law. (June 30, 1919, ch. 4, Section 17, 41 Stat. 20.)

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**BIAM REISSUE
FEBRUARY 1984**

Budget Schedule A Illustration 2

Statement of Tribal United States Treasury Fund Balances and Annual Income

Name of Tribe: _____ Reservation: _____
 Agency: _____ Area: _____

Line No.	Description of Items Relating to Fund Balances and Income (1)	PY Actual Earned Income (2)	CY Estimated Income (3)	BY Estimated Income (4)
1.	Unobligated balance at beginning of fiscal year.....	\$1,005,058	\$1,200,000	\$1,217,997
2.	Source of Income (Collected and billed)			
	a. Interest on funds in U. S. Treasury	47,000	48,000	49,000
	b. Sale of timber (stumpage).....	603,499	620,797	695,826
	c. Grazing and leasing	95,000	100,000	100,000
	d. Fees for services	3,450	5,000	5,000
	e. Sale of miscellaneous products and scrap.....	150	2,000	2,000
	f. Recoveries and refunds.....	-	3,000	3,000
	g. Mining leases and royalties	47,750	51,000	61,000
	Adjustment to Actual Collections.....	340	-	-
3.	Sub-total, Annual Income	1,801,567	2,029,797	2,133,823
4.	Total Amount Available	1,801,567	2,029,797	2,133,823
5.	Total Amount programmed ()	601,567	811,800	850,500
6.	Balance available subsequent year	1,200,000	1,217,997	1,283,323
7.				

Budget Schedule B
Tribal Program - Tribal Treasury Funds

Name of Tribe: _____ Reservation: _____

Agency: _____ Area: _____

Program Activities	PY Actual Cost	Cy Estimated Cost	By Estimated Cost
2651-Permanent Authorization:			
(a) Per capita payments	\$ -	\$ 475,000	\$ 475,000
Grazing roll	25,000	25,000	25,000
(b) Advances to Indian tribes (List major activities)	256,000	260,000	280,000
(c) Other tribal activities (For expenditure through Regional Disbursing Office)	24,450	25,000	30,000
Subtotal, Permanent Authorization (2651)	\$305,450	\$ 500,000	\$ 500,000
2652-Annual Authorization:			
<u>Capital Expenditures:</u>			
Equipment (movable)	\$ 950	\$ 5,000	\$ 2,000
Construction roads & trails	14,332	35,000	50,000
Construction Buildings & utilities	33,280	25,000	(see 2653)
Acquisition of Trust lands	75,000	50,000	50,000
Acquisition of non-trust lands	-	-	5,000
Total Capital expenditure costs	\$123,622	\$ 115,000	\$ 107,000

Budget Schedule B
Tribal Programs --- Tribal Treasury Funds (continued)

Name of Tribe: _____ Reservation: _____
 Agency: _____ Area: _____

Program Activities	PY Actual Cost	CY Estimated Cost	BY Estimated Cost
2652 - Annual Authorization (continued)			
<u>Operating Expenses</u>			
Welfare Services	\$ 17,950	\$ 18,000	\$ 18,000
Law and order	9,890	10,000	15,000
Forest Management:			
Personal services, forestry ..	47,420	48,000	72,000
Other expenses, forestry	6,750	10,000	20,000
Agricultural extension	9,800	10,000	6,500
R & M of roads and trails	-	1,800	2,000
Land supervision & leasing	12,300	13,000	13,000
Tribal administration	10,375	10,500	10,000
Compa r ation & expenses of			
Tribal attorneys	10,000	10,000	10,000
Tribal Council & committees ..	25,600	25,000	(see 2653)
Total operating expenses	150,185	163,300	175,000
Reconciliation of accrued			
expenditures to obligations ...	1,260	-	-
Subtotal, Annual Authori- zation (2652).	\$275,067	\$278,300	\$282,000

Budget Schedule B
Tribal Program - Tribal Treasury Funds (continued)

Name of Tribe: _____ Reservation: _____
 Agency: _____ Area: _____

Program Activities	PY Actual Obligations	CY Estimated Obligations	BY Estimated Obligations
<u>2653 - Indefinite Authorization:</u> (Advances) 1/			
Welfare Services	\$ 6,000	\$ 12,000	\$ 12,000
Credit operating expenses ...	6,500	6,500	6,500
Construction, buildings and utilities	-	-	15,000
Tribal Council & committees (List loans by type; such as:)	-	-	25,000
Revolving credit loans	7,550	13,000	8,000
Educational loans	1,000	2,000	2,000
Subtotal, indefinite authori- zation (2653)	\$ 21,050	\$ 33,500	\$ 68,500
Grand Total, 2651, 2652, 2653	\$601,567	\$811,800	\$850,500

1/ List by purpose as approved and allotted for the past year and as requested to be allotted for the current and budget years.

Budget Schedule C
Detail of Personal Services - U. S. Treasury Funds

Name of Tribe: _____ Reservation: _____
 Age _____
 AGENCY: _____ Area: _____

Pos. No.	Position Title	PY		CY		BY	
		U. S. Treasury Grade Salary		U. S. Treasury Grade Salary		U. S. Treasury Grade Salary	
T. 16	Policeman			GS-4 \$ 8,500		GS-4 \$ 3,585	
T. 17	Forester			GS-7 \$ 4,660		GS-7 \$ 4,795	
T. 18	Real Property Asst.			GS-7 \$ 4,660		GS-7 \$ 4,795	
T. 19	Clerk			GS-3 \$ 3,260		GS-3 \$ 3,345	
T. 20	Telephone operator			GS-3 \$ 3,260		GS-3 \$ 3,345	
	Total permanent positions			19,340		19,865	
	Deduct lapses (vacancies)			-		-	
	Net permanent positions			19,340		19,865	
	Part-time & temporary positions			4,600		4,500	
	Payments above basic rates			142		208	
	Total personal services			24,082		24,573	
	Deduct charges for quarters and subsistence.						
	Net personal services			1,235		1,235	
				2,847		23,338	

Budget Schedule D

Explanation of Tribal Program - U. S. Treasury Funds

Name of Tribe: _____ Reservation: _____
Agency: _____ Area: _____

Permanent Authorization, (Estimate, BY, (_____)

The Act of (cite statutory or code reference to permanent legislation) makes tribal funds in the Treasury to the credit of the _____ Tribe available for expenditure without annual authorization by Congress (subject to the approval of the Secretary for the following purposes:

Tribal activities conducted under this authority consist primarily of (sawmill operations, a livestock enterprise, and a credit program). Statement concerning each major activity and the effect or success of such programs. Cite reference to resolution for current year program.

Annual Authorization (Estimate, BY, (\$ _____).

This request is for the continuation of the welfare, law and order, land and forestry activities conducted by the tribe on about the same basis as in the CY. Each program is described as follows:

(Describe program proposed for the BY).

- a. Welfare
- b. Law and order
- c. Etc., as shown on Exhibit B

This request for BY (is not covered by a tribal resolution but will be transmitted as soon as possible) is covered by an approved tribal resolution (cite reference number and date) which is attached. Also cite reference to the applicable resolution covering the current year program.

Budget Schedule DExplanation of Tribal Program (Continued)

Indefinite Authorization (Estimate BY, \$ _____).

The _____ Tribe is an organized (unorganized) tribe (Under the IRA Act). Under their constitution and charter the treasurer (other tribal official) is authorized to accept and disburse funds belonging to the tribe. This official is (is not) bonded in the amount of \$ _____.

The advance of funds requested under this authority is for (deposit to local bank) (deposit) to an Indian Service Disbursing Agent's account) for disbursement under a plan of operation (shown below) attached hereto) (submitted to Central Office with 19 _____ fiscal year budget). The advance is for conducting credit operations (under) (outside) the provisions of 25 CFR 21.12. The tribe has a loan from the Revolving Credit Appropriation (from tribal funds under the old Industrial Assistance authorization). The accounting work load will not (will) be increased beyond the ability of the present staff if this request is approved. (The tribe has authorized the use of tribal funds for additional staff to meet the additional work load which will be created by the approval of this request by Resolution No. _____).

Cite reference to supporting resolution for current year program.

The approval of this request is recommended (not recommended for the following reasons):

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS

Illustration 6

No. 100

Date June 15, 19 CY

Copies to:

Tribal Government -- 3
 Fiscal ----- 2
 Budget ----- 1

ADVICE OF ALLOTMENT

To Area Director

Unit No. 14-20-500

Unit Name Portland Area Office

ACCOUNT No.	APPROPRIATION AND LIMITATION SYMBOL	AMOUNT ALLOTTED		PRIOR STATUS OF AMOUNT ALLOTTED	PRESENT STATUS OF AMOUNT ALLOTTED
		INCREASE	DECREASE		
	14X7475 Proceeds of Labor, Yakima Indians, Washington				
2651(CY)	Permanent Authorization	\$560,000			
2652(CY)	Annual Authorization	210,000			
53(CY)	Indefinite Authorization	125,000			
TOTAL,		\$895,000			

REMARKS: Put in sample remarks.

Approved by

 (Name of officer)
 Assistant Commissioner

 (Title)

Standard Form No. 1034—Revised
Form prescribed by
Comptroller General, U. S.
September 7, 1950
(Gen. Reg. No. 51, Supp. No. 11)

**PUBLIC VOUCHER FOR PURCHASES AND
SERVICES OTHER THAN PERSONAL**

D. O. Vou. No.

Bu. Vou. No.

U. S. Interior - Indian Blackhawk Agency, Blank, Montana
(Department, bureau, or establishment)

Voucher prepared at Blackhawk Agency, Blank, Montana July 7, 1957
(Give place and date)

THE UNITED STATES, Dr., Payee's Account No.

To Bureau of Indian Affairs
c/o Superintendent, Blackhawk Agency
Blank, Montana
(Address) (City) (State)

PAID BY

(For use of Paying Office)

No. and Date of Order	Date of Delivery or Service	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary) Discount Terms	QUANTITY	UNIT PRICE		AMOUNT		
				Cost	Per	Dollars	Cts.	
		For deposit to the account of the Blackhawk Tribe in accordance with Resolution No. B-25-57, dated April 2, 1957, and tribal budget for Fiscal Year 1958. Copies attached.				\$50,000	00	
PAYMENT: Complete <input type="checkbox"/> Partial <input type="checkbox"/> Final <input type="checkbox"/>								
Use continuation sheet(s) if necessary								
Shipped from				to	Weight	Government B/L No.	Total	\$50,000 00

I certify that the above bill is correct and just and that payment therefor has not been received.

(Payee must NOT use this space)

(Sign original only)

Date July 7, 1957 Payee Bureau of Indian Affairs
(This certificate not required when a like certificate is made by payee on attached bill or bills)
Per John Doe Title Superintendent

Differences

Account verified; correct for
(Signature or initials)

Contract No. Date Req. No. Date Invoice Rec'd.

Pursuant to authority vested in me, I certify that this account is correct and proper for payment.

Approved for \$ 50,000.00

↑
(Authorized Certifying Officer)

By John Doe
Title Superintendent

SIGN ORIGINAL ONLY

Title
Date

THE REVERSE OF THIS FORM MUST BE EXECUTED WHEN PURCHASES ARE MADE OR SERVICES SECURED WITHOUT WRITTEN AGREEMENT IN ANY FORM

ACCOUNTING CLASSIFICATION (For completion by Administrative Office)

Appropriation, limitation, or project symbol	Appropriation title				Limit'n. or Proj't. Amount	Appropriation Amount
	Amount	Obligations liquidated	COST ACCOUNT			
Allotment symbol	Amount	Obligations liquidated	Symbol	Amount	OBJECTIVE CLASSIFICATION	
			Symbol	Amount	Symbol	Amount

Paid by { Check No. dated, 19...., for \$ } on Treasurer of the United States in favor of payee named above.
Cash, \$....., on, 19.... Payee

* When a voucher is signed or receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.
† If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign on the line below "Approved for \$.....", and over his official title.

Per
Title

METHOD OF OR ABSENCE OF ADVERTISING

METHOD OF ADVERTISING

- 1. Advertising in newspapers Yes No
- 2. (a) Advertising by circular letters sent to dealers.
- (b) And by notices posted in public places Yes No .

(If notices were not posted in addition to advertising by circular letters sent to dealers, explanation of such omission must be made below.)

ABSENCE OF ADVERTISING

- 3. Without advertising, under an exigency of the service which existed prior to the order and would not admit of the delay incident to advertising.
- 4. Without advertising in accordance with
- 5. Without advertising, it being impracticable to secure competition because of

.....

.....

.....

(Here state in detail the nature of the exigency or circumstances under which the securing of competition was impracticable under 3 and 4)

NOTE.—The above form "Method of or Absence of Advertising" is to be used when purchases are made or services secured under proper authority without written agreement in any form. In case of a written agreement (formal contract, proposal, and acceptance less formal agreement) Standard Form No. 1036—Revised should be used for abstracting the method of or absence of advertising and award of contract. (See General Regulations No. 51, as amended.)

**PUBLIC VOUCHER FOR PURCHASES AND
SERVICES OTHER THAN PERSONAL**

D. O. Vou. No.

Bu. Vou. No.

U. S. Interior - Indian Central Office Washington, D. C.
(Department, bureau, or establishment)

Voucher prepared at Cherokee Agency, Cherokee, N. C. January 8, 1957
(Give place and date)

THE UNITED STATES, Dr., Payee's Account No.

To Eastern Band of Cherokee Indians
c/o Superintendent, Cherokee Agency
Cherokee, North Carolina
(Address) (City) (State)

PAID BY

(For use of Paying Office)

No. and Date of Order	Date of Delivery or Service	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE		AMOUNT	
				Cost	Per	Dollars	Cts.
		Partial advance of tribal funds under "Indefinite Authorization" to Eastern Band of Cherokee Indians per authority of "Dept. of Int. & Related Agencies Approp. Act, 1956" and Resol. #55-41, passed 12/7/55. Said resolution authorized the advance of \$50,000 of tribal funds for further development of Boundary Tree Tribal Enterprise upon appropriate modification of Band's loan contract #1-12-Ind-1591 with U. S. The modification was approved by Commissioner of Indian Affairs on February 6, 1956. Use continuation sheet(s) if necessary				\$25,000	00

PAYMENT:
Complete
Partial
Final

Shipped from _____ to _____ Weight _____ Government B/L No. _____ Total \$25,000 00

I certify that the above bill is correct and just and that payment therefor has not been received.

(Payee must NOT use this space)

(Sign original only)

Differences

Date 1/8/57 *Payee EASTERN BAND OF CHEROKEE INDIANS
(This certificate not required when a like certificate is made by payee on attached bill or bills)

Per John Doe Title Principal Chief

Account verified; correct for _____
(Signature or initials)

Contract No. _____ Date _____ Req. No. _____ Date _____ Invoice Rec'd. _____

Pursuant to authority vested in me, I certify that this account is correct and proper for payment.

† Approved for \$ 25,000.00

† _____
(Authorized Certifying Officer)

By John Brown

SIGN ORIGINAL ONLY

Title _____

Title Superintendent

Date _____

THE REVERSE OF THIS FORM MUST BE EXECUTED WHEN PURCHASES ARE MADE OR SERVICES SECURED WITHOUT WRITTEN AGREEMENT IN ANY FORM

ACCOUNTING CLASSIFICATION (For completion by Administrative Office)

Appropriation, limitation, or project symbol	Appropriation title				Limit'n. or Proj't. Amount	Appropriation Amount
	Allotment symbol	Amount	Obligations liquidated	COST ACCOUNT		
Symbol				Amount	Symbol	Amount

Paid by { Check No. _____ dated _____, 19____, for \$ _____ } (on Treasurer of the United States in favor of payee named above.)
Cash \$ _____, on _____, 19____ Payee _____
(Sign original only)

* When a voucher is signed or receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.
† If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign on the line below "Approved for \$ _____", and over his official title.

Per _____
Title _____

METHOD OF OR ABSENCE OF ADVERTISING

METHOD OF ADVERTISING

1. Advertising in newspapers Yes No
2. (a) Advertising by circular letters sent to dealers.
(b) And by notices posted in public places Yes No .

(If notices were not posted in addition to advertising by circular letters sent to dealers, explanation of such omission must be made below.)

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4. Without advertising in accordance with
5. Without advertising, it being impracticable to secure competition because of

.....
.....
.....
.....
.....

(Here state in detail the nature of the exigency or circumstances under which the securing of competition was impracticable under 3 and 4)

NOTE.—The above form "Method of or Absence of Advertising" is to be used when purchases are made or services secured under proper authority without written agreement in any form. In case of a written agreement (formal contract, proposal, and acceptance, less formal agreement) Standard Form No. 1036—Revised should be used for abstracting the method of or absence of advertising and award of contract. (See General Regulations No. 51, as amended.)

INT.—DUP. SEC., WASH., D.C. 30172