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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.

TRIBAL GOVERNMENT

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).

Release 83-1, 10-1-57

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.

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.

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**B I A M REISSUE
FEBRUARY 1984**

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