

MCT CONSTITUTION

Article II- MEMBERSHIP

Section 4. Any person ...rejected for enrollment...shall have the right to appeal...to Secretary...and the decision of the Secretary...shall be final.

1. 25 CFR Ch.1 § 62.2 (ENROLLMENT APPEALS)

Purpose... (b) The regulations in this part are **not applicable** and do not provide procedures for the filing of appeals from adverse enrollment actions by tribal committees, **unless:** (1) ... or (2) An appeal to the Secretary **is provided for in the tribal governing document.**

Article V- AUTHORITIES OF THE TEC COMMITTEE

Section 1. ...in accordance with applicable law or regulations...of the Dept. of Interior...

(a) To employ legal counsel forMCT tribe; the choice of counsel and fixing of fees...**subject to the approval of the Secretary of the Interior or his authorized representative:**

1. In March 2000, Congress enacted the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (the Act), **Pub. L. 106-179.** The Act generally **replaces 25 U.S.C. Section 81 with a new provision** that does not include the requirement to approve tribal attorney contracts. The law **“stuck out”_ the choice of counsel and fixing of fees to be subject to the approval of the Secretary”** after **“to employ legal counsel”**.

2. Subsection (f) of the Act repeals the portion of [25 U.S.C. 476](#) concerning approval of tribal attorney contracts. Additionally, repealing the corresponding regulations in [25 CFR part 89](#)

3. [25 USC 476 was transferred to 25 USC 5123: Organization of Indian tribes; constitution and bylaws and amendment thereof; special election Text contains those laws in effect on April 23, 2022. Language in Section (e) "...the constitution adopted by said tribe shall vest ...the following rights and powers: To employ legal counsel..." with no reference to the Secretary.]

(c) ...to advise Secretarywith regard to all appropriation estimates or Federal projects.

1. There are no Federal Laws that state the Tribe needs to advise the Secretary of Interior.

2. [IRA] 73rd Congress. Sess . II. CHS. Chapter 576 June 18, 1934 language. "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 the subject to the approval of the secretary of interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the tribe; and to negotiate with federal, state, and local governments. The Secretary of the Interior shall advise such tribes or its tribal council of all appropriation estimates or federal projects for the benefit of the tribe prior to this admission of such estimates to the Bureau of the budget and the Congress."

3. The Secretary pursuant to 25 USC 476 (transferred to sec. 5123) indicates **that it is the Secretary who should advise the tribe:** Sections 5123. Organization of Indian Tribes; Constitution and Bylaws and Amendment Thereof; Special Election.

(e) Vested rights and powers; advisement of Pre-submitted budget estimates

“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; 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 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 Office of Management and Budget and the Congress.”

(d) ...shall prepare an annual budget, requesting advancements to the control of the tribe of any money deposited to the credit of the Tribe in...Treasury, **subject to the approval of Secretary...**

1. The Indian Affairs Manual Part 26, Chapter 1 Budget/Budget Formulation: 1.3 Policy. It is the policy of Indian Affairs **to actively encourage the participation of the tribal governments in the budget process to the greatest extent possible by incorporating collective tribal priorities into annual budget requests.** Additionally, 1.6 Responsibilities. The **Regional Directors** of BIA **formulate the budget; distribute the budget to**

tribal governments and provides an opportunity for tribal governments in developing budget requests.

(f) ...shall be authorized to manage, borrow money... lease, permit, otherwise deal with tribal land...and other tribal assets ...or ...engage in any business...or loan money ...assign chattel or income **subject only to the approval of the Secretary...**

1. Same argument applied to Article V (c) above, and
2. Sections 5123. Organization of Indian Tribes; Constitution and Bylaws and Amendment thereof;

(e) Vested rights and powers; advisement of presubmitted budget estimates

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; 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 shall advise such tribe... of all appropriation estimates or Federal projects for the benefit of the tribe....

(g) ...**by ordinance, subject to the review of the Secretary...** levy licenses or fees on non-members...

1. 25 U.S.C. § 476(d)(1). This provision applies to the approval of constitutions and bylaws, or amendments thereto, which are adopted under the IRA. It does not apply to the approval of

ordinances. The IRA does not require that tribal ordinance be made subject to Secretarial approval.

2. THE BUREAU OF INDIAN AFFAIRS DIVISION OF TRIBAL GOVERNMENT SERVICES indianaffairs.gov

Tribal Relations

“The functions of Tribal Relations include the review and approval of Tribal organic documents as required by Federal (25 U.S.C. 476) or Tribal law. The organic documents may include new constitutions primarily for the newly recognized Tribes, amendments to existing constitutions or total revisions of existing constitutions. Tribal Relations staff provides technical assistance to Tribes with the initial drafting of a new constitution, an amendment or revision. Following procedures set forth in 25 C.F.R. Parts 81 and 82, the Bureau authorizes and conducts Secretarial elections where the Tribal electorate votes to accept or reject the proposed changes. In addition, Tribal Government staff receives, reviews, and approves petitions for special Secretarial elections in accordance with regulatory requirements”... “Staff reviews and approves Tribal ordinances, tribal resolutions, attorney contracts, attorney fees and expense vouchers when the Tribal constitution requires Secretarial approval”.

3. The Supreme Court addressed a similar ordinance issue in **Kerr-McGee v. Navajo Tribe, 471 U.S. 195 (1985),**

... Tribal Council of the Navajo Tribe enacted ordinances imposing taxes on the value of leasehold interests in tribal lands and on receipts from the sale of property produced or extracted or the sale of services within those lands. The

Petitioner was a mineral lessee, who claimed that the taxes were invalid without the approval of the Secretary of the Interior (Secretary). In this case...taxes were imposed on non-tribal persons or entities doing business on a reservation.

The case *Held*: The Secretary's approval of the taxes in question is not required. Pp. [471 U. S. 198-201](#).

“(a) While § 16 of the Indian Reorganization Act of 1934 requires a tribal constitution written under the Act to be approved by the Secretary, the Act does not require the constitution to condition the power to tax on the Secretary's approval. In any event, the Act does not govern tribes, like the Navajo, that declined to accept its provisions. And there is nothing to indicate that Congress intended to recognize as legitimate only those tribal taxes authorized by constitutions written under the Act. Pp. [471 U. S. 198-199](#). And even assuming that the Secretary could review tribal taxes on mineral production, it does not follow that he must do so. (c) Nor do statutes requiring the Secretary's supervision in other contexts indicate that Congress has limited the Navajo Tribal Council's authority to tax non-Indians. The power to tax members and non-members of a tribe alike is an essential attribute of the tribal self-government that the Federal Government is committed to promote.”

Article VI- AUTHORITIES OF THE RBC Committee.

Section 1. Each of the RBC shall, [in accordance with applicable law or regulations...of the Dept. of Interior](#) have the following powers:

- (a) [...to advise Secretary](#)Regarding all appropriation estimates or Federal projects.

1. Same argument as applied in Article V. (c)

(c) To consult, negotiate and contract...
authorize to manage, borrow money... lease,
permit,deal with tribal land...and other
tribal assets...**subject only to the approval of the
Secretary...**

1. Same argument as applied to Article V. (c)(f)

(d) ...by ordinance, **subject to the review of the
Secretary...** levy licenses or fees on non-
members...

1. Same argument as applied in Article V. (g)

Article IX- BONDING OF TRIBAL OFFICIALS

Section 1. ... bonds shall be furnished... and
shall be **acceptable to** the beneficiary
thereof **and the Secretary...**

1. There are no identifiable law or statute requires the bond to
be “acceptable” to the Secretary of the Interior.

2. Could not find any resources about Bonding Officials, except
for language about bonding in contracts explained in Public
Law 103-413 103d Congress TITLE I—INDIAN SELF-
DETERMINATION ACT CONTRACTS

Article X- VACANCIES AND REMOVAL

Section 5. In the event, the **RBC fails to act...**
reservation membership may...**by petition**
...appeal to secretary...

The BIA has an appellate review body called the Interior Board of Indian Appeals (IBIA), which does not deal with the tribal governing body's failure to act in accordance with the provisions in the constitution. See below what types of cases are reviewed by the IBIA. #2 specifically states "The Board does not have jurisdiction to review decisions made by tribal officials, tribal governing bodies, or tribal courts".

1. The Interior Board of Indian Appeals (IBIA) is an appellate review body that exercises the delegated authority of the Secretary of the Interior to issue final decisions for the Department of the Interior in appeals involving Indian matters. Located within the Department's Office of Hearings and Appeals, IBIA is separate and independent from the Bureau of Indian Affairs (BIA) and the Assistant Secretary – of Indian Affairs.

Through a two-person panel of administrative judges, IBIA has the authority to consider the following types of cases:

-Appeals from a variety of decisions rendered by BIA officials, including but not limited to decisions regarding the use of Indian trust lands (e.g., lease approval, enforcement, cancellation, and rental rate adjustment); the use of mineral resources; conveyances of rights-of-way on Indian lands; land sales, exchanges, or other encumbrances; trespass; taking land into trust; and disputes over the recognition of tribal officials for government-to-government relations between the Department and a tribe;

-Requests to reconsider final decisions of the Assistant Secretary to acknowledge, or decline to acknowledge, a group as an Indian tribe, issued under 25 C.F.R. Part 83 (2014);

-Appeals from Indian probate decisions of administrative law judges and Indian probate judges in OHA's Probate Hearings Division;

-Appeals from White Earth Reservation Land Settlement Act heirship determinations of an administrative judge in OHA's Hearings Division;

-Appeals from decisions of agency officials and administrative law judges in cases under the Indian Self-Determination and Education Assistance Act; and

-Other appeals as provided by regulation or matters referred to IBIA by the Secretary, the Assistant Secretary, or the Director of OHA.

IBIA is headed by a Chief Administrative Judge. Its decisions are final for the Department and may be appealed to the United States district courts.

2. Review of Tribal Decisions. The Board does not have jurisdiction to review decisions made by tribal officials, tribal governing bodies, or tribal courts. E.g., Delaunay v. Billings Area Director, 33 IBIA 269 (1999); Hunt v. Aberdeen Area Director, 27 IBIA 173 (1995); Welmas v. Sacramento Area Director, 24 IBIA 264 (1993); Blaine v. Aberdeen Area Director, 21 IBIA 173 (1992).

Article XI- RATIFICATION

Section 1. ...not operative until ratified...voting at special election...and approved by Secretary...

Current United States Code:

1. Under 25 U.S.C. Sec. 5123 (a) ADOPTION; EFFECTIVE DATE

Any Indian tribe shall have the right to organize for its common welfare and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by Secretary pursuant to subsection (d) of this section.

(d) APPROVAL OR DISAPPROVAL BY SECRETARY; ENFORCEMENT

(1) If an election called under subsection (a) of this section results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or

amendments thereto within...(1)

But

Once the Secretary of the Interior is removed from the Constitution, future ratification will be based on a Tribal Election process not approval by the Secretary after a Secretarial Election.

Article XII- AMENDMENTS

Section 1. This constitution may be ...revoked or amended...**by election called by Secretary... no amendment shall be in effect until approved by Secretary...**

1. Once the Secretary of the Interior is removed from the future Constitution, the ratification will be based on a Tribal Election process not approved by Secretary after a Secretarial Election.

Article XV- MANNER OF REVIEW

SEE ATTACHED SUMMARY