

NORTHERN ARAPAHO CODE

TITLE 6. EXECUTIVE AND ADMINISTRATIVE AFFAIRS

Section

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Section 101 - Great Seal of the Northern Arapaho Nation.

(a) Findings. The Northern Arapaho Tribe finds as follows:

(1) The Northern Arapaho Tribe is a federally recognized Indian Tribe and has been identified in the federal register as the "Arapaho Tribe of the Wind River Reservation," Wyoming. The Tribe is identified by the United States as the "Arrapahoe Nation" in the September 17, 1851, Treaty of Fort Laramie and as the "Northern Arapaho" in the May 10, 1868 Treaty.

(2) The Tribe is commonly known as either the Northern Arapaho Tribe or the Northern Arapaho Nation.

(3) The establishment of an official seal of the Northern Arapaho Nation would benefit the Tribe and others by helping to identify official actions taken by the Tribe.

COMMENT - See 62 Fed. Reg. 205 (10/23/97) for an example of the listing of the Northern Arapaho as a federally recognized Indian Tribe. The Treaty of 1851 may be found at 11 Stat. 749 and the Treaty of 1868 may be found at 15 Stat. 655.

(b) Seal. There shall be a seal of the Northern Arapaho Nation which shall be of the following design: the sacred circle with the four directions marked, and in the center of the circle, a buffalo skull with two singers on either side, and near the bottom left of the circle, two eagle feathers. Letters on the seal may say either "Northern Arapaho Tribe" or "Northern Arapaho Nation" above the circle.

COMMENT - The seal of the Northern Arapaho Tribe is registered with the United States Patent and Trademark Office, Database of Native American Tribal Insignia, serial number 89001052 (filing date April 12, 2005).

(c) Exclusive Right to License. The Northern Arapaho Tribe, by and through its duly elected governing body, the Northern Arapaho Business Council (NABC), shall have the sole and exclusive right to copyright, trademark, license or permit the

use, display or distribution of the seal of the Northern Arapaho Nation.

Section 102 - Certification of Public Acts or Records. The Secretary of the NABC is responsible for maintaining certain official records of the Northern Arapaho Tribe, including the public acts or records of the Tribe, which include the Northern Arapaho Code. The Secretary shall keep available for public inspection, during hours the Secretary's office is regularly open for business, copies of the Northern Arapaho Code. The Secretary is authorized to certify the authenticity of the Code and other public acts or records of the Northern Arapaho Tribe as public documents of the Tribe.

Section 103 - Joint Powers.

(a) Authority to Cooperate. In exercising, performing or carrying out any power, privilege, authority, duty or function, the NABC may cooperate with and assist other governing bodies or authorities of other Indian tribes, the United States, or of states. Any power, privilege or authority exercised or capable of being exercised by the NABC may be exercised and enjoyed jointly with any other governing body having a similar power, privilege or authority. Cooperation may be informal or subject to resolution, code or other appropriate action and may be embodied in a written agreement. The authority to cooperate with other governing bodies may be delegated by the NABC to an agency, department, program or other entity of the Northern Arapaho Tribe, provided that such delegation is in writing and not contrary to law.

(b) Joint Powers. Any cooperation or assistance, through a joint powers board or otherwise, and whether informal or pursuant to a resolution, code or other written document, neither increases nor decreases the powers, privileges or authorities of any other governing body.

(c) Continuing Responsibility. No exercise of joint powers and no agreement pursuant to this section shall relieve any participating entity of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by a joint powers board or other legal or administrative entity created by an agreement, the performance of

which may be offered in satisfaction of the obligation or responsibility.

(d) Agreements; No Loss of Sovereignty. Although not required, formation of a written agreement with cooperating entities is the preferred method of forming a joint powers board. By entering into such agreements, whether written or otherwise, the Northern Arapaho Tribe yields no sovereign authority that cannot be withdrawn by the NABC and reasserted directly by the Tribe.

(e) Joint Ownership or Operation.

(1) When pursuant to written agreement approved by the NABC, two or more entities of the Northern Arapaho Tribe, or of the Tribe and any other governing body, may jointly plan, own, lease, assign, sell, create, expand, finance, and operate properties or facilities for the provision of governmental services or to generate income to support the provision of governmental services.

(2) Any entity participating in a joint powers project may appoint a joint powers board or appoint any of the other entities participating in the project as its agent to manage the project or to manage the finances of the project. The joint powers board may create a single fiscal manager to receive monies and make disbursements for the entire project. The fiscal manager may set up any necessary sinking funds, reserve funds, escrow accounts, or building funds for the use of the project.

(3) If an agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, an agreement may provide for an administrator or administrative board responsible for administering the joint or cooperative undertaking and for representation of participating entities on any administrative board.

(4) Any agreement providing for the joint management of the resources of the Northern Arapaho Tribe shall specify the percentage ownership of any such resources in relation to any other resources owned or contributed by other participating entities. In the case of federal trust resources, such ownership is determined by federal law.

(f) **Administration of Joint Powers Boards.** The membership, terms of office, meeting schedules, and other administrative concerns of a joint powers board may be determined by agreement of the entities forming the board.

(g) **Joint Business Council Dissolved.**

(1) **Findings.**

(A) **Northern Arapaho Sovereignty.** The Northern Arapaho Tribe is a sovereign separate and distinct from the Eastern Shoshone Tribe. Without limitation, the Tribes each have their own separate language, culture, history, membership, tradition, voting rights, and governing bodies. Although both Tribes share common ownership in trust lands on the Wind River Reservation, and cooperate in a number of endeavors, they have never consolidated as one legal entity. The NABC is authorized to act, and historically has acted, only in its own capacity on behalf of the Northern Arapaho Tribe and not with authority over the Eastern Shoshone Tribe. The Eastern Shoshone Business Council acts on behalf of the Shoshone Tribe and not with authority over the Northern Arapaho Tribe.

COMMENT - The Shoshone Tribe presented a "common sovereignty" theory which the U.S. District Court flatly rejected in *Eastern Shoshone Tribe v. Northern Arapaho Tribe*, 926 F.Supp. 1024, 1032 (D.Wyo.1996) (regarding housing). Each Tribe governs itself separately by vote of the tribal membership at general council meetings or by vote of its elected business council, and a joint business council of representatives from both Tribes ("JBC") deals with certain matters of common interest. *Northern Arapahoe Tribe v. Hodel*, 808 F.2d 741, 744 (10th Cir. 1987). Each Tribe has separate treaties with the United States (the Northern Arapaho treaties include the September 17, 1851 Treaty of Fort Laramie and the Treaty of May 10, 1868; the Shoshone treaty is the July 3, 1868, Treaty with the Eastern Band Shoshoni and Bannock). Each Tribe is listed separately among the federally recognized tribes. See 25 C.F.R. §83.6 (b) notice of list of federally recognized tribes, and, for example, the notice at 56862 Federal Register Vol. 48, No. 248, Friday, December 23, 1983, Notices, at 56863.

(B) **Effect of Joint Business Council on Northern Arapaho Sovereignty.** Action taken by the Northern Arapaho Tribe in cooperation with the Eastern Shoshone Tribe through the Joint Business Council has been

misunderstood by officials of the United States, State of Wyoming, local governments, and others as an indication that the separate Tribes had consolidated their governing authorities into a single body or that one Tribe exercises veto authority over decisions and actions of the other. This misperception has led to informal policies treating each Tribe as subordinate to a joint authority and has reduced federal and other funding to the Northern Arapaho Tribe; results which diminish the sovereignty of the Northern Arapaho Tribe and reduce benefits for tribal members. This misperception has also been used by some for political gain and to the disadvantage of the Northern Arapaho Tribe. Despite repeated and on-going efforts to correct this misperception, it continues to have a negative effect on the practical ability of the Northern Arapaho Tribe to set and fund its own priorities and determine its own destiny.

(C) Joint Powers Board. The joint business council was a joint powers board, the authority of which was dependent upon the separate authority of the NABC and the Eastern Shoshone Business Council (or other authority of the Eastern Shoshone Tribe as determined by that Tribe). When the joint business council took action, it did so as the business council of each Tribe acting cooperatively and in concert with each other. Actions taken through the joint business council also could have been taken by separate action of each Business Council in coordination or cooperation with each other.

COMMENT - See *Eastern Shoshone Tribe v. Northern Arapaho Tribe*, 926 F.Supp. 1024, 1032 (D.Wyo.1996) in which the Court rejected the argument of the Shoshone Tribe that the NABC could not act independently of the joint business council in matters affecting the reservation generally. The Northern Arapaho Tribe argued that the joint council is merely a joint powers board operating with the consent of each Tribe but without any authority independent of each Tribe. See also *Northern Arapaho Tribe v. State of Wyoming*, 2002 WL 31961497 (D.Wyo. Feb 6, 2002, No. 00-CV0221-J), aff'd 429 F.3d 934 (10th Cir. 2005), where the Court rejected a theory that the State was only obligated to negotiate a gaming compact with the joint business council. Wyoming had argued that the Tribe's "governmental decision making is subject to the approval of another Tribe [the Shoshone]." (2002 WL 31961497,p. 3.)

(2) Joint Business Council Dissolved. The Northern Arapaho Tribe shall take no further action on behalf of the Northern Arapaho Tribe by or through the "Joint Business Council," by resolution or otherwise; nor shall the Tribe participate in meetings or sessions designated as the "Joint Business Council." Nothing in this Section prohibits participation by the Tribe in committees formed cooperatively with any other entity, including the Eastern Shoshone Tribe, and such committees may investigate and make recommendations to the NABC on matters within the purview of the committee.

(3) Sovereign Authority Reserved. The NABC is authorized to continue to act on behalf of and in the best interests of the Northern Arapaho Tribe, whether through a joint powers board other than the joint business council, or through separate resolution or other action, whether or not such action is in cooperation with the Eastern Shoshone Tribe. The Northern Arapaho Tribe reserves its right, from time immemorial, to act on its own behalf and in its own best interest.

(4) Continued Authority. As a matter of federal law, the Northern Arapaho Tribe shares ownership of certain real property interests held in trust by the United States for the benefit of the Northern Arapaho and the Eastern Shoshone Tribes. The NABC is authorized to manage the shared assets of the Tribe, and the operations and administration of shared projects, programs or efforts through direct agreement or cooperative action with the Eastern Shoshone Business Council; provided that the Northern Arapaho Tribe will no longer enter into any leases or other agreements jointly with the Eastern Shoshone Tribe regarding oil, gas or other mineral interests but shall instead enter only into its own separate leases or other agreements regarding the interests in such property which are held by the Northern Arapaho Tribe. Matters shall come before the NABC separately for consideration and action and for the concurrence, or non-concurrence, of the Eastern Shoshone Tribe.

(5) Effect on Programs and Prior Resolutions or Contracts. Programs operated by both the Northern Arapaho and Eastern Shoshone Tribe ("joint programs") prior to the effective date of this section are not affected by this

section, except that future management of such joint programs shall be made cooperatively through means other than the joint business council. Resolutions or contracts approved by the joint business council prior to the effective date of this section are not effected by this section, except that declarations or descriptions of the nature or authority of the joint business council which are inconsistent with this section are inaccurate and of no effect on the sovereign authority or interests of the Northern Arapaho Tribe.

COMMENT - Some joint business council resolutions may incorrectly refer to that council as having some authority higher than that of each Business Council when acting in concert. For example, resolution 2008-9981 incorrectly referred to the joint business council as "the governing body duly authorized by the General Councils of each Tribe to conduct business on behalf of the Tribes." In fact, the Northern Arapaho General Council has not delegated any authority to the joint business council and this resolution was subsequently rescinded by the NABC.

Section 104 - Executive Privilege. Members of the NABC have executive privilege in civil proceedings and civil discovery processes that relate to actions taken within the official responsibilities of the NABC. This executive privilege allows NABC members in their discretion to decline to respond to subpoenas, orders and discovery requests arising from the types of proceedings described above.

Section 105 - Subpoenas.

(a) Findings. The Northern Arapaho Tribe finds as follows:

(1) The Northern Arapaho Tribe, acting through the NABC, may exercise the sovereign authority of the Tribe to issue subpoenas.

(2) Issuance of subpoenas are an effective method of obtaining information necessary to the Tribe's exercise of its sovereignty, including its authority to prescribe the terms upon which persons or entities may transact business within its jurisdiction.

COMMENT - The authority of a Tribe to prescribe the terms upon which persons or entities may transact business within its jurisdiction is "one of the inherent and essential attributes of its original sovereignty. It was a natural right of that people, indispensable to its autonomy as a distinct tribe or nation." *Buster v. Wright*, 135 F. 947, 950 (8th Cir. 1905).

(3) Issuance of subpoenas are an effective method of obtaining information necessary to evaluate the proper administration of the laws of the Tribe, modifications in those laws, or enactment of additional legislation in the best interests of the Tribe.

(b) Scope and Extent of the Subpoena Power.

(1) The issuance of subpoenas by the NABC shall be lawful in any circumstances where the testimony, documentation, or other information sought may assist in any lawful legislative or administrative inquiry or undertaking of the Tribe.

(2) The scope of NABC's authority to issue subpoenas encompasses all matters within the civil and criminal jurisdiction of the Tribe, and shall extend to any individual or entity that is subject to the Tribe's jurisdiction, including individuals or entities that come within the Tribe's jurisdiction through consensual relations, or by manifesting a threat to the political integrity or general welfare of the Tribe or its members.

(c) Form and Content of Subpoena.

(1) Every subpoena issued under the authority of this section must be issued by the NABC, approved by a minimum of four (4) Council members in the same manner as a resolution of the Council, and attested thereto by the Secretary;

(2) Every subpoena must provide a summary of the purpose for which the information that is the subject of the subpoena is sought;

(3) Every subpoena must command each person to whom it is directed to do the following at a specified time and place:

(A) Attend and testify;

(B) Produce designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or

(C) Permit the inspection of the same or of premises;

(4) Every subpoena must advise each person to whom it is directed of the procedure to object to the subpoena under subparts (h) and (i) of this section, which shall be deemed accomplished by serving a copy of Title 6, Section 105 ("Subpoenas"), of the Northern Arapaho Code along with the subpoena;

(5) A subpoena commanding attendance at a deposition must state the method for recording the testimony;

(6) A command to produce documents, electronically stored information, or tangible things or to permit the inspection of the same or of premises may be included in a subpoena commanding attendance at a deposition, hearing or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced; and

(7) A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing or sampling of the materials.

(d) Service.

(1) Any person who is at least eighteen (18) years old and authorized by the Tribe may serve a subpoena. Serving a subpoena requires delivering a copy to the named person or their agent.

(2) A subpoena may be served at any place within the exterior boundaries of the Wind River Reservation; or beyond the exterior boundaries of the Wind River Reservation so long as the persons or entities to whom the subpoena is directed have minimum contacts with the Tribe and are otherwise subject to the jurisdiction of the Tribe; or in

accordance with the laws of any other governmental body with concurrent jurisdiction over the persons or entity and subject matter at issue in the subpoena.

(e) Proof of Service. Proving service, when necessary, is established by filing with the Tribal Secretary a statement from personal knowledge under penalty of perjury showing the date and manner of service and the names of the persons served.

(f) Protecting a Person Subject to a Subpoena. The NABC, in issuing and serving a subpoena, must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.

(g) Command to Produce Materials or Permit Inspection. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of the same or of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing or trial.

(h) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the NABC, or an attorney designated in the subpoena, a written objection to the subpoena or any of its requirements of inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the following rules apply:

(1) At any time, on notice to the commanded person, the serving party may move the Tribal Court for an order compelling production or inspection; and

(2) These acts may be required only as directed in the order, and the order may be tailored to minimize unnecessary expense resulting from compliance.

(i) Quashing or Modifying a Subpoena; Specifying Conditions as an Alternative.

(1) On timely motion, the Tribal Court must quash or modify a subpoena that:

- (A) Fails to allow a reasonable time to comply;
- (B) Subjects a person or entity to undue burden;
- (C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (D) Is not otherwise in accordance with the law.

(2) To protect a person subject to or affected by a subpoena, the Tribal Court may, on motion, quash or modify the subpoena if it would require improper disclosures.

(3) The Tribal Court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship.

(j) Duties in Responding to a Subpoena. The following procedures apply to producing documents or electronically stored information:

(1) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business, or must organize and label them to correspond to the categories in the demand.

(2) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(4) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel or for a protective order, the person responding must show that the

information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if good cause is shown, if the Court finds that such discovery serves a vital governmental purpose or the interests of justice.

(k) Claiming Privilege or Protection.

(1) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or otherwise subject to protection must:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications or tangible things in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim.

(2) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or otherwise protected, the person making the claim may notify any person that received the information of the claim and the basis for it. After being notified, such person must promptly return, sequester or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Tribal Court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(l) Contempt or Other Sanctions. The Tribal Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena, or impose any other sanction authorized by law.

(m) Appeal. Any appeal from an order of the Tribal Court in applying this Section ("Subpoenas") of the Northern Arapaho Code shall proceed in accordance with the applicable laws of the Northern Arapaho Tribe, which proscribe procedures for appealing rulings of the Tribal Court.

Section 106 - Assignment of Per Capita Payments.

(a) Findings.

(1) Members of the Northern Arapaho Tribe receive "per capita" payments, primarily from oil and gas royalties, pursuant to 25 U.S.C. §613.

(2) 25 U.S.C. §613 provides that such payments shall not be subject to any lien or claim of any nature against any of the members of the Tribe unless the NABC of such member consents thereto in writing, with certain exceptions regarding obligations to the United States.

(3) Tribal members who seek consumer or other loans are often required by lenders to assign their per capita payments as security for the loan and must also request approval of the NABC for the assignment to be effective as a matter of law.

(4) Approval of per capita assignments by the NABC would be more prompt and efficient if the Council were to delegate such authority from time to time to someone designated to provide such approvals for tribal members.

(b) Delegation of Authority to Approve Per Capita Assignments. The NABC may delegate its authority to approve the assignment of per capita payments by written resolution. Such resolution shall clearly identify the person(s) so authorized and may be modified or terminated by subsequent written resolution of the NABC.

Section 107 - Unemployment Benefits of Elected Officials

(a) Findings.

(1) The Northern Arapaho Tribe voluntarily participates in the unemployment benefits program of the State of Wyoming, paying into that program so that employees of the Tribe who have lost their jobs may collect unemployment benefits.

(2) The Wyoming District Court ruled in *Leona Buckman*

v. Wyoming Department of Employment (2008) that elected officials of the Tribe who are not re-elected to their position are not eligible for State unemployment benefits in connection with that former position.

(3) Elected officials of the Tribe are employees of the Tribe and ought to have protection against loss of income that is comparable to that provided to other employees by the Tribe through the State system.

(b) Tribal Unemployment Benefits Program for Elected Officials. All persons who serve at least six (6) months of a full term of elected office with the Northern Arapaho Tribe, including, without limitation, the Business Council, Economic Development Committee and Tribal Committee, and are not re-elected to office shall be entitled to unemployment compensation from the Tribe in amounts comparable to that provided by the State of Wyoming to covered employees. "Comparable" is defined for purposes of this section to mean an amount that does not exceed one-half (½) of the person's last prior salary as a tribal official for no more than twenty-six (26) weeks. In the event that a qualified former official locates other employment, benefits paid under this program will be reduced to the extent that such benefits, combined with current income, would exceed that person's last prior salary as a tribal official.

History: Title 6. Section 101, The Great Seal of the Northern Arapaho Nation, was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated October 1, 2001, Resolution No. 2001-8469. Section 102, Certification of Public Acts or Records, was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated November 4, 2004, Resolution No. 2004-8838. Section 103, Joint Powers Act, was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated September 22, 2008, Resolution No. 2008-10023. Section 104, Executive Privilege, was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated June 9, 2011, Resolution No. NABC-2011-158. Sections 105 and 106 were enacted by resolution of the Northern Arapaho Business Council dated July 1, 2014, Resolution No. NABC-2014-395. Sections dissolving the former Joint Powers Board known as the Joint Business Council were enacted by resolution of the Northern Arapaho Business Council dated September 22, 2014, Resolution No. NABC-2014-428. Technical amendments for the purpose of clarifying references to tribal courts were enacted on August 17, 2016, by Resolution No. NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713. Section 107, creating unemployment benefits for elected officials, was enacted on November 7, 2016, by Resolution No. NABC-2016-741.