

GOVERNING DOCUMENTS

Bureau of Indian Affairs- Alaska Region
Branch of Tribal Operations
Branch of Self-Determination



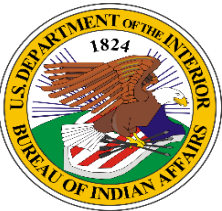
FEDERAL LAW'S IMPACT

Congress has authority to pass laws affecting tribes

Court decisions that interpret these laws can extend and add specifics to the law that act as guidelines.

No Tribal law can be contrary to Federal law

Secretary of the Interior and the Bureau of Indian Affairs have certain authorities that derive from both Tribal and Federal laws.



Allows for discrimination in voting on the basis of race, which normally would violate the Fifteenth Amendment.

Did not include the Establishment Clause of the United States Constitution, First Amendment (separation of church and state), due to the inextricably intertwined nature of spirituality with tribal cultures.

Did not require Tribes to provide for jury trials in civil cases.

Did not require Tribes to provide for grand jury indictments or appointed counsel for indigent defendants.***Amended by the Tribal Law and Order Act of 2010*

Limited punishment in tribal cases to one year imprisonment and \$5,000.0 fine or both.***Amended by the Tribal Law and Order Act of 2010*

Did not provide a remedy for violations of ICRA, except for the writ of habeas corpus

INDIAN CIVIL RIGHTS
ACT OF 1968 (ICRA)
25 U.S.C. 1302



- Section 8 provides that no tribal government shall “deny to any person the **equal protection** of its laws or deprive any person of liberty or property without **due process** of law.”

INDIAN CIVIL
RIGHTS ACT
OF 1968 (ICRA)
25 U.S.C. 1302



EQUAL PROTECTION

- Equal Protection requires governments pass only those laws that will affect all people equally.
- One person cannot be denied a right that is granted to others who are similar to him.
- ICRA requires that a tribe operate in such a way that no group of people will be treated unjustly.



DUE PROCESS

- Due process requires governments enforce those laws only through established procedures that will protect the individual's rights and ensure "fair play."
- What process is due (owed) to the individual?
- Internal procedures should guarantee that everyone who applies for a benefit will follow the same rules and be judged in the same way, have a right to appeal an adverse decision and be told when the decision is final.
- Appeal: notice, instruction on how, when and where to file an appeal, and a chance to present their case at a hearing.

GOVERNING DOCUMENTS ADOPTED PURSUANT TO FEDERAL STATUTE

Constitutions

- Indian Reorganization Act of June 18, 1934 (IRA)
- Alaska Reorganization Act (ARA), 49 Stat. 1250, May 1, 1936
- Oklahoma Indian Welfare Act (OIWA), 49 Stat. 1967, June 26, 1936



CONSTITUTION & BYLAWS

Constitution

contains the fundamental principles
which govern operation

Bylaws

establish and elaborate on the specific
rules of guidance by which the group is to
function



OTHER GOVERNING DOCUMENTS

Ordinances

Define the rules, regulations, procedures for meeting a particular need stated or implied in the tribe's governing document.

Enacted to:
Make new law; Amend existing law; and Repeal existing law

Resolutions

Official written statements memorializing actions taken by the tribal governing body.



SAMPLE ORDINANCES

Election

Enrollment

Tribal
Courts

Ethics

Housing

Public
Safety

Council

Employment

Law and
Order

Environmental
Control

Solid
Waste

Drug
and/or
Alcohol

Motor
Vehicle

Firearms

Drinking
Water

Curfew



POLICIES AND PROCEDURES

- Policies and procedures are designed to **influence and determine all major decisions and actions**, and to provide that all activities take place within the boundaries set by them.

Policies

- A set of policies are **principles, rules, and guidelines formulated or adopted by an organization to reach its long-term goals** and typically published in a booklet or other form that is widely accessible.

Procedures

- Procedures are the **specific methods employed to express policies in action in day-to-day operations** of the organization.



SAMPLE POLICIES AND PROCEDURES

Personnel	Financial	Property	Procurement
Administrative	Travel	Code of Conduct	Member Concerns or Grievances
Motor Vehicle Operation	Record Keeping	Housing	Member Benefits
Drug-free	Inventory Control	IT Security	Member Assistance



INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, SUBPART F (25 CFR 900.35)

- Provides minimum standards for the following tribal management systems used by Indian Tribes or Tribal Organizations when carrying out self-determination contracts.
 - (a) financial management system
 - (b) property management system, and
 - (c) procurement management system
- It does not cover tribal personnel management systems.



MINIMUM REQUIREMENTS FOR FINANCIAL MANAGEMENT SYSTEMS PURSUANT TO ISDEAA SUBPART F (25 CFR §900.45)

Financial Reports

Accurate, current, and complete disclosure of the financial results of contract activities. Including a completed Financial Status Report.

Budget Controls

Shall permit the comparison of actual expenditures or outlays with the amounts budgeted for the contract.

Accounting Records

Records sufficiently detailed to identify the source and application of contract funds received.

Information to identify contract awards, obligations, and unobligated balances, assets, liabilities, outlays, or expenditures and income.

Allowable Costs

Shall be sufficient to determine the reasonableness, allowability, and allocability of contract costs based upon the terms of the contract and applicable OMB cost principles, as amended by the Act.

Internal Controls

Maintain effective control and accountability for all contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Tribe under the contract.

Source Documentation

Contain accounting records that are supported by source documentation, e.g. canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support contract fund expenditures.

Cash Management

Accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Tribe, and subcontractor, so that complete and accurate cash transactions may be prepared as required by the contract.



MINIMUM REQUIREMENTS TO PROCUREMENT MANAGEMENT SYSTEMS PURSUANT TO ISDEAA SUBPART F (25 CFR §900.48)

- Ensure that vendors and subcontractors perform in accordance with the terms of contracts or purchase orders ;
- Shall maintain written standards of conduct governing the performance of its employees who award and administer contracts;
- Shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure reasonableness of the price;
- Shall provide full and open competition, to the extent feasible in the local area, subject to the Indian preference and tribal preference provisions of the Act (7(b));
- Shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions under the proposed procurement.;
- Shall maintain records on the significant history of all major procurements; and
- To establish that the Indian tribe or tribal organization is solely responsible for processing and settling all contractual and administrative issues arising out of a procurement, including, but not limited to: source evaluation, protests, disputes, and claims



MINIMUM REQUIREMENTS TO PROPERTY MANAGEMENT SYSTEMS PURSUANT TO ISDEAA SUBPART F (25 CFR §900.51-900.52)

- Shall account for all property furnished or transferred by the Secretary for use under a Self-Determination contract or acquired with contract funds.
- Shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:
 - Where title vests in the Indian tribe, in accordance with Tribal law and procedures; or
 - In the case of a tribal organization, according to the internal property procedures of the tribal organization.
- Shall track:
 - Personal property with an acquisition value in excess of \$5,000 per item
 - Sensitive personal property, which is all personal property that is subject to theft and pilferage, as described by the tribe or tribal organization.
 - Real property provided by the Secretary for use under the contract.



MINIMUM REQUIREMENTS TO PROPERTY MANAGEMENT SYSTEMS PURSUANT TO ISDEAA SUBPART F (25 CFR §900.53-900.54)

- Shall contain records that accurately describe the property, including any serial number or other identification number.
- Shall contain information such as the:
 - Source
 - Titleholder
 - Acquisition date
 - Cost
 - Share of Federal participation in the cost
 - Location
 - Use and Condition of the property
 - Date of disposal and sale price, if any.
- Effective internal controls include procedures for:
 - Conduct of periodic inventories;
 - To prevent loss or damage to property; and
 - To ensure that property is used for a Tribe or tribal organization's contract(s) until the property is declared excess to the needs of the contract consistent with the tribe or tribal organization's management system.



MINIMUM REQUIREMENTS TO PROPERTY MANAGEMENT SYSTEMS PURSUANT TO ISDEAA SUBPART F (25 CFR §900.55)

- A physical inventory should be conducted at least once every 2 years.
 - The results of the inventory shall be reconciled with the Indian Tribe or Tribal Organization's internal property and accounting records.



HOW LONG MUST AN INDIAN TRIBE OR TRIBAL ORGANIZATION KEEP MANAGEMENT SYSTEMS RECORDS (25 CFR §900.41)

Financial

Three years from date of submission of the single audit report

- Documentation of supporting costs incurred under the contract.

Property

Three years from the date of disposition.

- Real and personal property transactions.

Procurement

Three years after the final payment and all other pending matters are closed.

- Solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions.

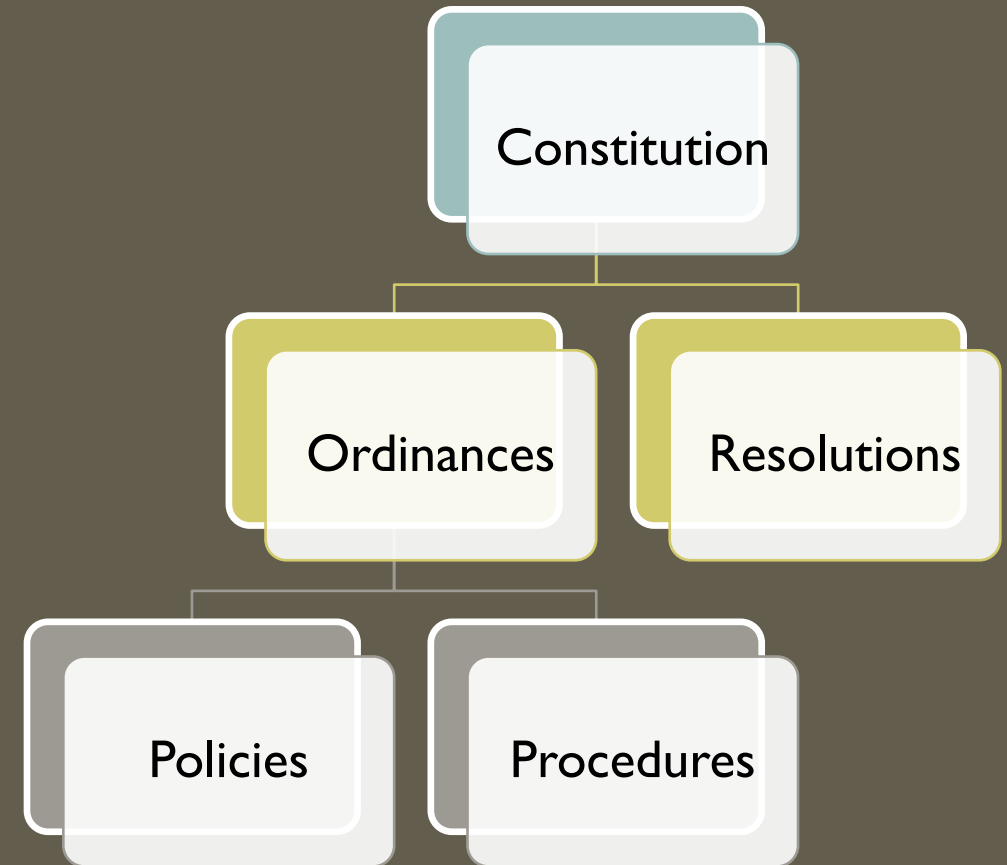
Litigation, Audit Exceptions, and Claims

Must be retained until the action has been completed.



HIERARCHY OF LAW

- Constitution is the law with the authority over other law.
- All tribal laws must be consistent with the tribal constitution or tribal governing document.
- If a tribe does not follow its constitution, it is violating the law and the will of the people who chose those laws.



INTERPRETING AND WRITING LAW



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

Words in a law must be defined in the context of the whole law.

- “judge” in an ordinance relating to tribal courts probably means “tribal judge.”

When things are listed in a law as examples, only things like the examples are included in the scope of the law.

- If a law required all livestock including horses and cattle to be vaccinated, it would intend that goats be vaccinated. It would probably not include pet dogs.

When things are listed in a law without using a word like “including” or “such as” (which indicates examples), anything not specifically listed is excluded from the law.

- If a law simply required all horses and cattle to be vaccinated, it probably would not intend that goats be vaccinated also.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

When there is more than one law on a subject, each law is intended to be effective, and the various laws must all be read together.

- If an old adoption ordinance requires $\frac{1}{4}$ Native blood and a new ordinance requires residency, then both $\frac{1}{4}$ Native blood and residency are required for adoption. ***unless there is a superseding clause.*

Words and phrases are interpreted according to ordinary rules of grammar.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

- Singular includes plural
- Words of one gender includes the other gender
- Present tense includes future
- Week = 7 consecutive days
- In figuring a period of days, the first day is excluded and the last day is included.
- If the last day of any period is a Sat/Sun/Holiday, the period is extendable to include the next day that is not a Sat/Sun/Holiday
- In figuring a period of months, the period ends on the same numerical day in the final month as the day of the month from which the figuring began, unless there are not that many days in the final month, in which case the period ends on the last day of the month.
 - Received March 30, deadline April 30.
 - Received March 31, deadline April 30.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

A quorum of a public body is a majority (more than half) of the number of members that the law establishes for that body.

Technical and legal words are interpreted with the technical, legal, or special meaning appropriate to the context of law.

How a law is interpreted at the time it is passed is a meaningful guide to interpreting law later on.

The way other courts interpret the same law is also a good guide.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

The specific will control the general.

- An ordinance states that persons can relinquish only their own membership, but another provision states that the membership of a minor may be relinquished by the parents or guardian. The first ordinance would not apply to minors; but the rule for their specific situation takes precedence over the general provision.

When a court of last resort (no more appeals possible) interprets the language of a law, lawmakers that pass later acts with the same language intend that language to mean the same thing as in the court.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

When a law is passed that directly conflicts with an older law on the same subject, the new law is intended to change the older law.

- Old ordinance requires one year residency for membership, new ordinance requires maintaining a house in the community for membership.

Repeal by inference is disfavored. Repeal of a law cannot be assumed just because a new law is passed. The new ordinance should have a repeal provision, repealing the old ordinance.

When a law that repealed another law itself is repealed, this does not revive the law originally repealed.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

Lawmakers favor the public interest over the private interest.

Lawmakers intend the entire law to be effective. No one part of the law is less important than another.

Lawmakers do not intend the law to have a result that is absurd, impossible, or unreasonable.

Lawmakers do not intend the law to be unconstitutional.

Definitions are law in an ordinance.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

When writing an ordinance

- Do not write rules in the definition
- Define precisely (limit use of “includes” or “including.”)
- Use natural meanings where possible.
- Stay within the definition when using the defined word in the ordinance.
- Do not define too many words—define only key words.



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

Shall

- Shall is an order. Only use “shall” when the law is a command

May

- May allows choice or discretion

Will

- Will allows decision making power to be left open

And/Or

- “and” means both, “or” means either one. If Council means either one or both, the use of and/or is acceptable



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

Living

- “Living on March 1, 1960” vs “Born on or before March 1, 1960”

Child

- Natural child and/or adopted children

Descendant

- Children born to a member
- Descendant of a member (skip generations?)



CONSIDERATIONS IN INTERPRETING AND WRITING LAWS

Residence

- Physical presence vs. property ownership

Jargon/Slang

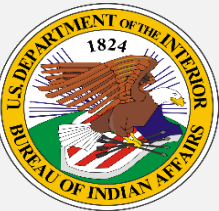
- May be unclear to those that didn't write it

Time Duration

- Calendar year (PFD), physical year (ADFG), time since—describe specifically



AMENDMENTS TO GOVERNING DOCUMENTS



ARTICLES/SECTIONS SHOULD NEVER CONTRADICT

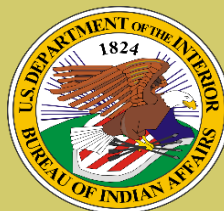
AMENDMENT CONSIDERATIONS

- Amending one Section may contradict another

“SECOND SET OF EYES”

- Informal review:
 - a recommended change in one area may require an amendment to another element
 - Example: If you reduce council size from 7 to 5, the quorum must also adjust from 4 to 3.
 - Example: Rules of Eligibility for Tribal Membership might impact Rules of Eligibility for Voting in an Election
 - Example: Changes in percentages (i.e. 30%, 20%...)





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