

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS



CONSTITUTION AND BYLAWS OF THE
APACHE TRIBE OF
THE MESCALERO RESERVATION
NEW MEXICO



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CONSTITUTION AND BYLAWS OF THE APACHE TRIBE OF THE MESCALERO RESERVATION OF NEW MEXICO

PREAMBLE

We, the Apache Tribe of the Mescalero Reservation in New Mexico, in order to secure to ourselves and our posterity the political and civil rights guaranteed to us by treaties and by the statutes of the United States; to secure educational advantages; to encourage good citizenship; to build up an independent and self-directing community life; to encourage and promote all movements and efforts leading to the general welfare of our tribe; and acknowledging Almighty God as the source of all power, do ordain and establish this constitution.

ARTICLE I—TERRITORY

The jurisdiction of the tribal business committee and the courts of the Apache Tribe of the Mescalero Reservation shall extend to all of the territory included within the present boundaries of the reservation, and to such other lands as have been or may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II—MEMBERSHIP

SECTION 1. The membership of the Apache Tribe of the Mescalero Reservation shall consist of all persons enrolled on the 1935 census of the tribe, all children of resident members, and all children of nonresident members who have resided on the reservation for 5 years.

SEC. 2. The tribal business committee shall have power to pass ordinances, subject to the approval of the Secretary of the Interior, covering the adoption of new members, except that no person shall be adopted into the tribe who has not resided upon the reservation for a probationary period to be fixed by resolution of the committee.

ARTICLE III—GOVERNING BODY

SECTION 1. The governing body of the reservation shall be known as the Mescalero tribal business committee and shall consist of 10 members elected at large for the reservation until representatives shall be appointed by the tribal business committee among the following communities: Tularosa Canyon, Whitetail, Elk-Silver, Carizo, and Three Rivers.

SEC. 2. The Mescalero tribal business committee shall have power by ordinance to change and establish the boundaries of communities

and to determine their ratio of representation as the shifting of population may warrant from time to time.

SEC. 3. The members of the Mescalero tribal business committee shall be qualified voters of the reservation 25 years of age or over.

SEC. 4. Immediately after the first election of officers under this constitution, the newly elected tribal business committee shall meet and organize by electing from their own members a president and a vice-president, and from within or without their own membership, a secretary and a treasurer.

SEC. 5. As soon as the Mescalero tribal business committee shall organize after the first election, it shall determine, by lot, five of its members to serve until the first annual election and five to serve until the second annual election. Thereafter their successors shall be elected to serve for 2 years.

ARTICLE IV—NOMINATIONS AND ELECTIONS

SECTION 1. The first election of a tribal business committee shall be held within 30 days after the adoption and approval of this constitution, and shall be called and supervised by the present tribal business committee in cooperation with the superintendent of the reservation.

SEC. 2. The tribal business committee, or an election board appointed by that committee, shall provide rules governing elections and shall designate polling places and election officials.

SEC. 3. Enrolled members of the Apache Tribe of the Mescalero Reservation who are 21 years of age or over, and who have resided on the reservation at least 1 year prior to the election, shall have the right to vote.

SEC. 4. Elections shall be held annually in December on a day selected by the tribal business committee at least 30 days before the election.

SEC. 5. Any qualified person may become a candidate for the Mescalero tribal business committee by presenting his name to the secretary of that committee, or by having it presented on a petition signed by five qualified voters of the reservation, at least 15 days before the election in either case. The secretary shall post the names of all candidates in one or more public places at least 10 days before the election.

SEC. 6. If a vacancy occurs in the Mescalero tribal business committee, it shall be filled by the committee until the next annual election.

ARTICLE V—POWERS

SECTION 1. The Mescalero tribal business committee shall have the following powers, subject to popular referendum as herein provided:

(a) To regulate its own procedures; to appoint subordinate boards, tribal officials and employees not otherwise provided for in this constitution, and to prescribe their salaries, tenure, and duties; to charter subordinate organizations for economic purposes, and to regulate such organizations by ordinances, provided that any ordinance affecting organizations borrowing money from the Federal Government shall be subject to approval by the Secretary of the Interior.

(b) To represent the tribe and to act in all matters that concern the welfare of the tribe, and to make decisions not inconsistent with or contrary to this constitution or the Constitution and Statutes of the United States.

(c) To negotiate with the Federal, State, or local Governments, and to advise and consult with representatives of the Interior Department on all activities that may affect the reservation, and in regard to all appropriation estimates and Federal projects for the benefit of the tribe before such estimates or projects are submitted to the Bureau of the Budget and to Congress.

(d) To veto the sale, disposition, lease, or incumbrance of tribal lands, interest in lands, or other tribal assets, that may be authorized by any agency of government without the consent of the tribe; and any sale, grant, or lease of any portion of the reservation, or the grant of any rights to the use of lands or other assets, or the grant or relinquishment of any water or mineral rights or other natural or fiscal assets of the Mescalero Reservation, are hereby reserved to the sanction of the tribe.

(e) To regulate the uses and disposition of tribal property and funds; to protect and preserve the wild life and natural resources of the tribe; to cultivate Indian arts, crafts, and culture; to administer charity; and to promulgate ordinances covering the leasing of tribal lands and assignments made upon tribal lands, all action of the tribal business committee with respect to such lands to be in conformity with departmental regulations for the protection of Indian range and timber resources.

(f) To administer any funds or property within the exclusive control of the tribe, and to make expenditures from available funds for public purposes of the tribe, including salaries and remuneration of officers and other employees.

(g) To provide by ordinance, subject to approval by the Secretary of the Interior, for the removal or exclusion from the reservation of any non-member whose presence may be injurious to members of the tribe.

(h) To employ legal counsel for the protection and advancement of the rights of the tribe and its members, choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(i) To promulgate ordinances covering law enforcement on the reservation and to set up courts for the trial and punishment of offenders against such ordinances in cases which do not come within the exclusive jurisdiction of the Federal courts; and to promulgate ordinances and adopt rules, regulations, and codes for the regulation of domestic relations of members of the tribe, and governing marriage, divorce, legitimacy, adoption, the care of dependents, the punishment of offenses against the marriage relationship; and to issue marriage licenses and decrees of divorce. Any ordinances, rules, or regulations covering the matters enumerated in this paragraph shall be subject to the approval of the Secretary of the Interior, and are to be administered by the tribal business committee through a tribal or reservation court, except such matters as may be left to the State or Federal laws and courts.

(j) To regulate the inheritance of property.

(k) To exercise such further powers as may be delegated to the Apache Tribe of the Mescalero Reservation by any authorized Government official or agency.

SEC. 2. The foregoing enumeration of powers shall not be construed to limit the powers of the Apache Tribe, but all powers of local government not expressly intrusted to the Mescalero tribal business committee by this constitution shall be reserved to the people and may be exercised through the adoption of appropriate bylaws or constitutional amendments.

SEC. 3. Any resolution or ordinance which by the terms of this constitution is subject to review by the Secretary of the Interior, shall be presented to the superintendent of the reservation who shall, within 10 days thereafter, approve or disapprove the same. If the superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the superintendent shall transmit a copy of the same, bearing his indorsement, to the Secretary of the Interior, who may within 90 days from the date of enactment, rescind the said ordinance or resolution for any cause by notifying the tribal business committee of his veto.

If the superintendent shall refuse to approve any resolution or ordinance submitted to him, within 10 days after its enactment he shall advise the tribal business committee of his reasons therefor. If these reasons appear to the committee insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may within 90 days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE VI—REFERENDUM

Upon a petition signed by at least 25 percent of the qualified voters of each community, demanding a referendum on any proposed or enacted ordinance or resolution, the tribal business committee shall call an election at which a majority of those voting shall approve or disapprove the ordinance or resolution in question.

ARTICLE VII—LANDS

The general control of the reservation lands and other tribal property shall continue as heretofore, until changed in any particular by ordinance. The tribal business committee shall have power to assign unused lands or to reassign any unused assignments which have been idle for 2 or more years. No reassignment of land may be made so long as the original assignee or his heirs shall reside on the land unless he shall voluntarily release the land to the tribe.

The tribal business committee shall decide by ordinance what shall constitute an economic unit for assignment and shall determine the rules of inheritance of such assignment.

ARTICLE VIII—AMENDMENTS

Amendments to this constitution may be proposed by a majority vote of the tribal business committee and may be ratified and approved in the same manner as this constitution and bylaws.

**BYLAWS OF THE APACHE TRIBE OF THE MESCALERO RESERVATION
OF NEW MEXICO**

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. The president of the Mescalero tribal business committee shall preside at all meetings of the committee and direct its officers. He shall appoint, subject to the approval of the committee, such boards, committees, and other officers as the business of the tribe may require. In the absence of the president, the vice-president shall preside and shall have all the duties, responsibilities, and privileges of the president.

SEC. 2. The secretary shall keep the minutes of all regular and special meetings of the tribal business committee, conduct the necessary correspondence, and shall file a copy of the minutes in the office of the superintendent at the conclusion of each meeting. A copy shall also be sent, through the superintendent, to the Commissioner of Indian Affairs as soon as possible after each meeting. The committee may request the services of the superintendent's secretary in connection with all meetings and in the keeping of records.

SEC. 3. The treasurer shall accept, receipt for, keep, and safeguard all funds in the custody of the committee, whether they be tribal funds or special funds for which the committee is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the committee and shall make and keep a faithful record of such funds and shall report on all receipts and expenditures and the amounts and nature of all funds in his possession or custody to the committee at regular meetings and at such other times as requested by the committee, his reports to be in writing and matters of record. He shall not expend or otherwise use any funds in the possession of the committee except when he is authorized to do so by the committee. All checks shall be signed by the treasurer and countersigned by the president, and all checks issued prior to July 1, 1940, shall be approved by the superintendent of the reservation. The books and records of the treasurer shall be audited at least once a year by a competent auditor employed by the committee, and at such other times as the committee or the Commissioner of Indian Affairs shall direct. The treasurer shall furnish a surety bond satisfactory to the committee and the Commissioner of Indian Affairs.

ARTICLE II—MEETINGS OF THE COMMITTEE

SECTION 1. The regular meetings of the tribal business committee shall be held at Mescalero, New Mexico, on the second Saturday in January, March, May, July, September, and November. Special meetings may be called by the president or by any three committeemen who shall notify all committee members at least 24 hours before the time of convening such meeting, unless a majority of the committee approve a shorter call in an emergency.

SEC. 2. Seven members shall constitute a legal quorum of the committee.

SEC. 3. No member of the tribal business committee shall vote on any matter in which he is financially interested apart from the interests of the tribe.

SEC. 4. At the first meeting of the tribal business committee, it shall establish by resolution a regular order of business similar to that used by the present tribal business committee.

ARTICLE III—ADOPTION

This constitution and bylaws, when ratified by a majority of the qualified voters of the Apache Tribe of the Mescalero Reservation, voting at a special election called for the purpose by the Secretary of the Interior, at which at least 30 percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior, and if approved by him, shall be effective from the date of approval.

CERTIFICATE OF ADOPTION

Pursuant to an order, approved February 4, 1936, by the Secretary of the Interior, the attached constitution and bylaws was submitted for ratification to the Indians of the Apache Tribe of the Mescalero Reservation and was on February 29, 1936, duly approved by a vote of 165 for, and 89 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378).

MARION SIMMS,
Chairman of Election Board.
ASA DAKLUGIE,
Secretary of Election Board.

E. R. McCRAY,
Superintendent in charge the Mescalero Reservation.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached constitution and bylaws of the Apache Tribe of the Mescalero Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution and bylaws are hereby declared inapplicable to these Indians.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and bylaws. Approval recommended March 19, 1936.

JOHN COLLIER,
Commissioner of Indian Affairs.

WASHINGTON, D. C., March 25, 1936.

HAROLD L. ICKES,
Secretary of the Interior.
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