

# STEVEN D. SANDVEN

L A W O F F I C E

**PRINCIPAL**  
**Steven D. Sandven**

*Admitted in South Dakota,  
Minnesota & Washington D.C.*

300 North Dakota Avenue, Suite 106  
Sioux Falls, South Dakota 57104  
Telephone (605) 332-4408  
Facsimile (605) 332-4496  
ssandvenlaw@aol.com

April 3, 2006

Edgar French, President  
Executive Committee  
Delaware Nation  
P.O. Box 825  
Anadarko OK 73005

**RE: CONSTITUTIONAL ELECTIONS UNDER THE OIWA**

Dear President:

This memorandum is provided in response to contentions that Tribes organized under the Oklahoma Indian Welfare Act ("OIWA") follow different procedures than Tribes organized pursuant to the Indian Reorganization (Wheeler-Howard) Act ("IRA") when calling Secretarial elections to amend their Constitutions. However, the federal regulations do not delineate between the two Acts, and therefore, the Constitution Revision Committee is proceeding as mandated by both federal and Tribal law.

As you know, in 1934, Congress enacted the IRA, which, inter alia, authorized Indian tribes to organize for their common welfare and to adopt an appropriate constitution and bylaws. Section 16, 48 Stat. 987, 25 U.S.C. 476. Specifically, the IRA provided that any tribe or tribes "residing on the same reservation" had the right to organize and adopt a constitution and by-laws which became effective upon a majority vote of the adult members of the tribe and upon approval by the Secretary of the Interior. 25 U.S.C.A. § 476. The Act also permitted the tribe to incorporate under a charter issued by the Secretary and approved by a majority vote of the members. 25 U.S.C.A. § 477. Under these provisions, a large number of the tribes adopted constitutions within a few years of passage of the Act, and many also became incorporated as an aid to the transaction of tribal business.

However, that and certain other provisions of the IRA were expressly made inapplicable to Oklahoma tribes. Section 13, 48 Stat. 986, 25 U.S.C. 473. John Collier, drafter of the IRA, called into question the exclusion of "almost one-third of the Indians of the United States" in his annual report before Congress that same year. In 1936, Congress responded by enacting a distinct statute, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. §503 that provides:

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 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) [25 U.S.C.A. § 461 et seq.]: 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.

Again, the IRA and the OIWA authorize the Secretary of the Interior to conduct referendum elections to amend tribal constitutions pursuant to "rules and regulations" determined by the Secretary. 25 U.S.C. §§ 476(a)(1). Those regulations are set forth in the Code of Federal Regulations. 25 C.F.R. § 81. The regulations are entirely procedural in nature and govern only the mechanism by which tribal constitutions may be amended. The regulations do not distinguish between Tribes organized under the OIWA and those organized pursuant to the IRA. In fact, the regulations are entitled "Indian Reorganization Pursuant to *Federal Statute*." Emphasis added. Notably absent is a distinction between the IRA and the OIWA. My assertion is supported by 25 C.F.R. §81.1(h) that defines "federal statute" as "one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act)." Finally, the foregoing conclusion was confirmed by the BIA in Anadarko on March 23, 2006.

Please contact me if there are any questions.

Sincerely,

STEVEN SANDVEN  
Attorney for the Delaware Nation