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L A W O F F I C E S

PRINCIPAL

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MEMORANDUM

DATE: September 12, 2005

TO: Delaware Nation

FROM: Steven D. Sandven, Esq.

RE: **ARTICLE XII – BILL OF RIGHTS**

Purpose

In their relationship with the tribe, Indians are normally protected by a wide variety of criminal due process, civil rights and civil liberties protections contained in the tribal constitution and the tribal law and order code. However, this is not always the case. Further, the Bill of Rights and the 14th Amendment to the United States Constitution do not impose limitations on tribal action and thus, do not confer protections on tribal members. For example, in Talton v. Mayes, 219 F. Supp. 19, 21 (1963), the Supreme Court refused to apply the Fifth Amendment to invalidate a tribal law that established a five-man grand jury. Similarly, in Glover v. United States, 272 F. 2d 131, 10th Cir. (1959), the court stated that "the right to be represented by counsel is protected by the Sixth and 14th Amendments. These Amendments, however protect... this right only as against action by the United States in the case of the...Sixth Amendment...and as against action by the States in the case of the 14th Amendment, Indian tribes are not States within the meaning of the 14th Amendment." Again, in the case of Native American Church v. Navajo Tribal Council, 119 F. Supp. 429 (D.M. Mex. (1954), it was held by implication that a tribal Indian cannot claim protection against illegal search and seizure by tribal officials. In 1954, an attempt to redress tribal invasions of religious freedom arose in a suit against the Jemez Pueblo Tribal Council and governor by Pueblo members, charging that they had been subjected to indignities, threats and reprisals solely because of their Protestant faith and that the tribal council had refused to permit them to bury their dead in the community cemetery and to build a church on tribal land. The court acknowledged that the alleged acts represented a serious invasion of religious freedom but concluded that the acts were not taken "under color of any statute, ordinance, regulation, custom or usage of any State or Territory" and thus no cause of action arose under the federal Constitution or under federal civil rights acts. In response to these federal court decisions, the

individual Tribes have found it necessary to protect its members by incorporating a “bill of rights” provision into their Constitutions.

Currently Reads

Article XII. Section 1. All citizens of this tribe shall enjoy without hindrance freedom of worship, conscience, speech, press, assembly and association.

Section 2. This constitution shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the citizens of the tribe as citizens of the State of Oklahoma or the United States.

Section 3. The individual property rights of any citizen of the tribe shall not be altered, abridged or otherwise affected by the provision of this constitution and bylaws without the consent of such individual citizens.

Section 4. The enumeration of any rights in this Article shall not be interpreted to limit the rights otherwise guaranteed by the Indian Civil Rights Act of 1968 (25 USCA 1302).

Other Tribes

Blackfeet Tribe

AMENDMENT VIII. Section 1. Suffrage - Any member of the Blackfeet Tribe, eighteen (18) years of age or over, shall be eligible to vote at any election when he or she presents himself or herself at a polling place within his or her voting district. Section 2. Economic Rights - All members of the tribe shall be accorded equal opportunities to participate in the economic resources and activities of the reservation. Section 3. Civil Liberties - All members of the tribe may enjoy without hindrance freedom of worship, conscience, speech, press, assembly, and association. Section 4. Rights of Accused - Any member of the Blackfeet Tribe accused of any offense shall have the right to a bond, open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses on his own behalf. Trial by jury may be demanded by any prisoner accused of any offense punishable by more than thirty days imprisonment. Excessive bail shall not be required and cruel punishment shall not be imposed.

Cherokee Nation of Oklahoma

Article II. Bill of Rights. Section 1. The judicial process of the Cherokee Nation shall be open to every member of the Cherokee Nation. Speedy and certain remedy shall be afforded under the terms of this Constitution for every wrong and injury to person, property or reputation wherein said remedy does not conflict with the laws of the United States. The Council shall prescribe the

procedures pertinent thereto. The appropriate protections guaranteed by the Indian Civil Rights Act of 1968 shall apply to all members of the Cherokee Nation.

Cheyenne-Arapaho Tribes of Oklahoma

Article III – Individual Rights and Present Services. Section 1. To the extent applicable, no person shall be denied by the tribes in exercising self-government those rights guaranteed in Title II of the Act of April 11, 1968, including freedom of speech, conscience, worship, and assembly. Section 2. Individual rights in allotted and inherited lands shall not be disturbed by anything contained in this constitution and by-laws. Section 3. No treaty rights of the tribes shall be in anyway affected by any provision of this constitution and by-laws. Section 4. The rights of members as citizens of the United States and of the State of Oklahoma shall not be disturbed by anything contained in this constitution and by-laws. Section 5. Existing aids and services extended to the tribes, such as health service, education, extension service, etc., shall not be curtailed because of anything contained in this constitution and by-laws. Section 6. In all recommendations by the tribes for employment of persons to fill positions with the tribes or within the jurisdiction of the Concho Agency, first Preference shall be given to enrolled members of this organization; and second preference shall be given to persons married to members of this organization. Section 7. All enrolled members of the tribes shall be eligible for all rights, privileges, and benefits given by this constitution and by-laws, such as claims credits, acquisition of land, all educational grants, and any other future benefits.

Chickasaw Nation

Article IV. Section 1. Nothing in this Constitution shall be interpreted in a way which would change the individual rights and privileges the tribal members have as citizens of the Chickasaw Nation, the State of Oklahoma, and the United States of America. Section 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times the inalienable right to alter, reform or abolish their form of government in such a manner as they may think expedient; provided, such action is taken pursuant to this Constitution. Section 3. No religious test shall ever be required as a qualification for any office of public trust in this Nation. Section 4. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege, and no law shall ever be passed curtailing the liberty of speech, or of the press. Section 5. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with powers of government; for redress of grievances or other purposes, by address, or remonstrance.

Minnesota Chippewa Tribe

Article XIII. All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to

freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

Chitimacha Tribe of Louisiana

Article IX. The protections guaranteed to individual tribal members by Title II of the Civil Rights Act of 1968 (82 Stat. 77) against actions of a tribe in exercising its powers of self-government, shall apply where appropriate to members of the Chitimacha Tribe of Louisiana.

Choctaw Nation of Oklahoma

Article IV. Section 1. Nothing in this Constitution shall be interpreted in a way which would diminish the rights and privileges that tribal members have as citizens of this Nation, the State of Oklahoma, the United States of America or under any Act of the Congress of the United States. Sec. 2. No religious test shall ever be required as a qualification to any office of public trust in this Nation. Sec. 3. The right that every member has to speak, write or publish his opinions on matters relating to the Choctaw Nation shall never be abridged. Sec. 4. The members shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those vested with powers of government for redress of grievances or other purposes by address or remonstrance. Sec. 5. The individually vested property rights of members of the Choctaw Nation of Oklahoma shall not be affected in anyway whatsoever by the provisions of this Constitution or any enactment of the Tribal Council.

Comanche Indian Tribe of Oklahoma

Article X. Section 1. All members of the Comanche Indian Tribe shall enjoy without hindrance freedom of worship, conscience, speech, press, assembly and association. Section 2. This constitution shall not in any way be construed to alter, abridge or otherwise jeopardize the rights and privileges of the Comanche Indians as citizens of the United States. Section 3. The individual vested property rights of any member of the Comanche Indian Tribe, which shall include restricted lands and income therefrom as well as personal property, shall not be altered, abridged or otherwise affected by the provision of this constitution. Section 4. Tribal members shall have the right to review tribal records, including those of any enterprise operated/funded in the name of the Tribe (including CERCO, Bingo and any other tribally operated/funded business) so long as the examination of the records is permitted within seven (7) days of the receipt of a written request for the review. No charge or fee shall be imposed upon any tribal member in connection with the right to examine tribal records. No person or committee shall be authorized to deny any tribal member the right to make copies of tribal records except as required by Federal Statutes. Section 5. No charge or filing fee shall be imposed upon any tribal member in connection with the right to petition which are provided for in this constitution. No person or committee shall be authorized to deny any tribal member the right to petition.

Confederated Tribes of the Coos, Lower Umpqua and Siuslaw

Article II. Nothing in this constitution shall be construed as restricting the exercise of hunting, fishing or gathering rights of members, to the fullest extent permitted by law. No tribal decision affecting such hunting, fishing or gathering rights shall be made except by a full vote of the tribal membership.

Confederated Tribes of Warm Springs

Article VII. SECTION 1. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the Reservation. SECTION 2. All members of the Confederated Tribes may enjoy without hindrance, freedom of worship, speech, press and assembly. SECTION 3. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested by any member accused of any offense punishable by more than 30 days' imprisonment. Excessive bail or cruel or unusual punishment shall not be imposed.

Kialagee Tribal Town

Article IX. SECTION 1. All members of this Town shall enjoy equally without hindrance, freedom of worship, conscience, speech, press, assembly and association. SEC. 2. This Constitution and Bylaws shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of the members of this Town as citizens of the State of Oklahoma and the United States. SEC. 3. The individual property rights of any member of this Town shall not be altered, abridged or otherwise affected by the provisions of this Constitution and Bylaws without the consent of such individual member.

Please contact me if there are any questions.