

## **TITLE 20 – LEGAL**

### **CHAPTER 1 - OFFICE OF THE ATTORNEY GENERAL**

*Legislative History: The “Statute Creating the Office of Attorney General of the Tohono O’odham Nation,” was adopted on October 1, 1989 by Resolution No. 326-89, and was amended (regarding coordination with Court Solicitor and other in-house legal counsel) on November 6, 1991 by Resolution No. 91-500.*

STATUTE CREATING THE OFFICE OF THE ATTORNEY GENERAL  
OF THE TOHONO O'ODHAM NATION

Section 1. Establishment of Office of the Attorney General:

Purpose.

A. There is hereby established the Office of the Attorney General of the Tohono O'odham Nation.

B. The Office of the Attorney General shall have overall responsibility for providing legal advice and representation to all officials, agencies, departments, divisions, and branches of the Nation's government, and for representing the Nation in all legal proceedings, and in other matters that affect the legal interests of the Nation; and it shall have such other responsibilities as the Legislative Council may direct from time to time.

Section 2. Personnel.

A. The Office of the Attorney General shall consist of the Attorney General of the Nation, and such Deputy or Assistant Attorneys General and other staff as the Attorney General shall determine are required from time to time, subject to funding provided by the Legislative Council.

B. The Attorney General and any Deputy or Assistant Attorney General shall be licensed attorneys, admitted to practice before the highest court of a state of the United States, and in the case of the Attorney General, shall have had at least three years experience in the practice of law prior to

taking office. If not admitted to the practice of law in the State of Arizona at the time of taking office, the Attorney General and any Deputy or Assistant Attorney General shall seek such admission at the earliest possible time thereafter, and must be admitted to practice in the State of Arizona within eighteen (18) months after taking office or be subject to dismissal from their positions in the Office of the Attorney General.

C. The Attorney General shall be appointed by the Chairman of the Nation, from among a group of no fewer than three persons qualified for the position, nominated by the Domestic Affairs Committee of the Legislative Council. The appointment shall become effective upon its approval by a majority of the Legislative Council. The Attorney General may be dismissed only with the concurrence of the Chairman of the Nation and of a majority of the Legislative Council. Deputy and Assistant Attorneys General and their staff shall be hired by the Attorney General and shall serve at his pleasure, subject to the personnel policies of the Nation. The salaries of the Attorney General and his staff shall be established by the Tribal Council.

Section 3. Authority, Responsibilities and Duties.

The Attorney General shall have the following authority, responsibilities and duties:

A. To provide legal advice and representation as needed to the Nation, its agencies and offices, the Legislative Council and its committees, and such other entities as the Legislative

Council shall authorize the Attorney General to advise and represent; and to work with the Staff Attorney to the Chairman on legal matters involving action by or the involvement of the Chairman of the Nation, to promote cooperation and resolution of any potential conflicts or disagreements between the Chairman's office and the Legislative Council.

B. To provide legal advice and assistance to the District Councils of the Nation, subject to the availability of resources, and subject to the ethical limitations on the Attorney General relative to involvement in matters in which a District may have interests adverse to those of the Nation (provided, that nothing herein shall preclude any District Council from obtaining independent counsel in any matter, and the Attorney General may, on request, advise and assist any District Council in selecting and negotiating an appropriate contract with any such outside counsel).

C. At the request of any office or agency of the Nation, or of the Legislative Council or any of its committees, or on his own motion, to determine whether outside counsel should be retained by the Nation for advice or representation as to any specific task or specialized area of law and the justification therefor, and to make a recommendation thereon to the Legislative Council, and upon the Council's approval of such recommendation, to oversee the process of selecting such counsel and to prepare and approve the contract with such counsel. The Attorney General shall thereafter monitor the work of any such outside counsel.

D. To formulate overall administrative and operating policies pertaining to the Office of the Attorney General, including the Office of the Prosecutor, and to take such action as the Attorney General deems necessary to implement such policies.

E. To exercise ultimate supervisory control and direction over all personnel within the Office of the Attorney General, including the Office of the Prosecutor.

F. To represent the Nation and its governmental agencies in all legal matters in its dealings and relations with persons and organizations outside of the Nation, except to the extent that such representation has been delegated to other counsel.

G. Annually to develop and submit to the Legislative Council a budget for the operation of the Office of the Attorney General.

H. To assist members of the Legislative Council in preparing proposed resolutions of the Council and the committees thereof, and to review all resolutions proposed to be submitted to the Legislative Council and to provide advice and recommendations thereon, and to provide legal advice and opinions to the Legislative Council and its committees to assist them in conducting their business.

I. To review and approve all contracts for services, and all contracts of any type for an amount in excess of \$10,000 (and any other contracts, at the request of the concerned office), proposed to be entered into by or on behalf of the Nation or any

of its agencies, offices, departments, or divisions, prior to execution thereof, and to negotiate any such contracts in consultation with the head of the concerned offices or agencies of the Nation.

J. To oversee and advise the Legislative Council on the compilation and adoption of a comprehensive code of the laws of the Nation, and from time to time to propose the enactment of such additional laws as, in the Attorney General's opinion, are required for the orderly management of the Nation's affairs and the regulation of persons and activities within the Nation.

K. Regularly, and on special request, to report to the Legislative Council and to the Chairman of the Nation on the legal affairs of the Nation, the particular legal matters facing the Nation and their potential consequences, and on the progress of the Attorney General in meeting the Nation's legal needs.

L. To perform all of the duties and responsibilities of the Office in accordance with the highest standards of legal ethics.

Section 4. Office of the Prosecutor: Establishment; Purposes.

A. There is hereby established within the Office of the Attorney General of the Nation, the Office of the Prosecutor.

B. It is the role of the Office of the Prosecutor to investigate, and where appropriate to prosecute, in the Nation's courts, persons subject to the Nation's jurisdiction who are alleged to have committed crimes under the laws of the Nation,

and to perform such other functions as are reasonably related to the foregoing, including the assumption of certain responsibilities with respect to civil matters related to such criminal prosecutions, including extradition, forfeiture and exclusion proceedings.

Section 5. Personnel

A. The Office of the Prosecutor is headed by the Chief Prosecutor, who shall be appointed by the Attorney General of the Nation and who shall serve at his pleasure. There shall be such Assistant Prosecutors as the Chief Prosecutor determines to be necessary for the fulfillment of the duties of the Office, consistent with funds appropriated by the Legislative Council, and such Assistants shall be appointed by the Chief Prosecutor and shall serve at his pleasure, subject to the personnel policies of the Nation.

B. The Chief Prosecutor shall be a licensed attorney, admitted to practice before the highest court of a state, and shall achieve admission to the Bar of the State of Arizona no less than eighteen (18) months after taking office. The Chief Prosecutor shall, with the approval of the Attorney General, establish qualifications for Assistant Prosecutors sufficient to insure their ability to undertake competent investigation and prosecution of crimes.

Section 6. Duties, Responsibilities and Authority of the Office of the Prosecutor.

The Prosecutor shall:

A. Report to the Attorney General with respect to all activities of the Prosecutor's office and be responsible to the Attorney General for all administrative and operational matters not relating to the investigation and prosecution of crimes and criminal defendants.

B. Investigate, prosecute and dispose of all cases within the Prosecutor's jurisdiction, acting independently and upon his or her own authority within the guidance of law and professional ethics.

C. Exercise supervisory control and direction of all personnel within the Office of the Prosecutor.

D. Within the areas of the Prosecutor's responsibility and authority, represent the Nation's government in its dealings and relations with persons and organizations outside of the Nation.

E. Recommend to the Attorney General changes and improvements in the criminal and other codes of the Nation that would lead to an improvement in the criminal justice system of the Nation, and assist the Attorney General in overseeing the compilation of a comprehensive criminal code and code of criminal procedure for the Nation.

JRWH2226



**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Adopting the Recommendation of the Special Counsel  
on Counsel for Establishment of the Office of  
Attorney General, and Implementing Such Recommendations,  
and for Other Purposes)**

RES. NO. 326-89

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3 WHEREAS, by contract entered into on March 1, 1989, the Nation  
4 contracted with Richard W. Hughes, of the law firm of  
5 Rothstein, Bennett, Daly, Donatelli & Hughes, of Santa  
6 Fe, New Mexico, as Special Counsel on Counsel, to  
7 evaluate the adequacy of the Nation's present contract  
8 for legal representation, and to propose recommendations  
9 for improved methods for providing the Nation with  
10 needed legal advice and representation; and

11 WHEREAS, by report dated August 14, 1989, the Special Counsel on  
12 Counsel has submitted to the Legislative Council his  
13 Report of Findings and Recommendations, wherein he  
14 proposes the creation of an Office of the Attorney  
15 General of the Tohono O'Odham Nation, all of which  
16 matters are set out in detail in the report; and

17 WHEREAS, the Legislative Council has reviewed the report  
18 carefully, and considered its recommendations and the  
19 implications thereof in great detail; and

20 WHEREAS, the Legislative Council finds the adoption of the  
21 recommendations of the Special Counsel on Counsel would  
22 greatly improve the legal representation available to  
23 the Nation and its various offices and departments, and  
24 that such recommendations should be adopted and  
25 implemented as proposed by the Special Counsel on  
26 Counsel.

27 NOW, THEREFORE, BE IT RESOLVED by the Tohono O'Odham Legislative  
28 Council, as follows:

- 29 1. The Legislative Council hereby accepts the Report  
30 of the Special Counsel on Counsel, and adopts the  
31 recommendations therein in full, as is more fully  
32 set forth herein.
2. The Legislative Council hereby adopts the attached  
statute creating the Office of the Attorney  
General of the Tohono O'Odham Nation, which office

RES. NO. 326-89  
(Adopting the Recommendation of the Special Counsel  
on Counsel for Establishment of the Office of  
Attorney General, and Implementing such Recommendations,  
and for Other Purposes)  
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shall include the Office of the Prosecutor as specified therein, and directs that this statute shall be a permanent part of the positive law of the Nation.

3. The operating budget for the Office of the Attorney General, attached as Exhibit A to this resolution, is hereby approved and adopted, for FY '90.
4. There is hereby established, in the Office of the Chairman, the position of Staff Attorney to the Chairman of the Nation. Base salary for said position will be established by the Executive Branch.
5. The sum of \$60,000.00 is hereby appropriated to furnish and equip the offices of the Office of the Attorney General, in accordance with Table C in the Report of the Special Counsel on Counsel, and to pay for the expenses of recruitment, hiring and orientation of the Attorney General and his staff and the Staff Attorney to the Chairman.
6. The old TWEF Office is hereby withdrawn and set aside to house the new Office of the Attorney General of the Tohono O'odham Nation. The sum of \$60,000.00 is hereby appropriated to renovate the old TWEF Building for this purpose.
7. All tribal offices having contractual relations with any other attorney or law firm shall, no later than one month after the Attorney General has taken office, transmit to the Attorney General the attorney contract between that office and such attorney or law firm, for review as provided by the act creating the Office of the Attorney General.
8. Within three months after he takes office, the Attorney General appointed hereunder shall report to the Legislative Council on whether Special Counsel contracts ought to be entered into with the firm of Strickland & Altaffer or any other attorneys or law firms, and as to each setting forth the proposed scope of such contract, the cost of the services to be provided thereunder, and a justification for such recommendation.


The foregoing Resolution was passed by the Tohono O'odham Council on the 22nd day of September, 1989 at a meeting at which a quorum was present with a vote of 907.0 for; 326.0 against; 291.0 not voting; and 01 absent, pursuant to the powers vested in the Council by Section 2(a) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986, and approved by the Acting Deputy Assistant Secretary -Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

RES. NO. 326-89  
(Adopting the Recommendation of the Special Counsel  
on Counsel for Establishment of the Office of  
Attorney General, and Implementing such Recommendations,  
and for Other Purposes)  
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TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Edward D. Manuel, Legislative Chairman  
28th day of September, 1989.

ATTEST:

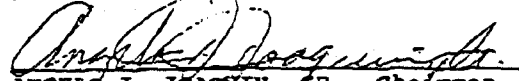
  
Teresa M. Choyguha, Legislative Secretary  
28th day of September, 1989.

Said Resolution was submitted for approval to the office of the  
Chairman of the Tohono O'odham Nation on the 28th day of  
September, 1989, at 6:36 o'clock, P.M.,  
pursuant to the provisions of Section 5 of Article VII of the  
Constitution and will become effective upon his approval or upon  
his failure to either approve or disapprove it within 48 hours of  
submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Edward D. Manuel, Legislative Chairman

(X) APPROVED ) on the 1 day of Oct, 1989.  
( ) DISAPPROVED ) at 10:35 o'clock, P.M.

  
ANGELO J. JOAQUIN, SR., Chairman  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 3rd day of  
October, 1989, at 3:21 o'clock, P.M.

  
Teresa M. Choyguha  
Legislative Secretary

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Amending the Statute Creating the Office of the Attorney General)

RES. NO. 91-500

1  
2 WHEREAS, the Tohono O'Odham Legislative Council enacted Resolution No.  
3 326-89 on September 22, 1989 adopting the statute creating the  
4 Office of the Attorney General; and

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6 WHEREAS, Section 1 (B) of the statute states that "the Office of the Attorney  
7 General shall have overall responsibility for providing legal advice and  
8 representation to all officials, agencies, departments, divisions, and  
9 branches of the Nation's government, and for representing the Nation  
10 in all legal proceedings"; and

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12 WHEREAS, there are significant areas of legal representation in the Judicial Branch  
13 important to the effective operation of the Tribal Courts, such as  
14 pending cases, in which the Attorney General is ethically prevented  
15 from giving the Branch legal advice; and

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17 WHEREAS, the Tohono O'Odham Judiciary has proposed in their Fiscal Year 1992  
18 budget the position of Court Solicitor who would be responsible for  
19 giving legal advice to the Judicial Branch; and

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21 WHEREAS, the Domestic Affairs Committee, which is the oversight committee for  
22 the Office of the Attorney General, held a joint meeting with the  
23 Judiciary Committee, which is the oversight committee for the Judicial  
24 Branch; and

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26 WHEREAS, both committees recommend to the Legislative Council that approval  
27 and funding of the position of Court Solicitor be conditioned on an  
28 amendment to the statute creating the Office of the Attorney General,

in the form attached hereto, which would require and authorize the Attorney General to take appropriate steps to promote cooperation and resolution of any potential conflicts or disagreements between the Judicial Branch and the Legislative Branch or the Executive Branch.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'Odham Legislative Council does hereby adopt the attached amendment to the statute creating the Office of the Attorney General.

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 4th day of November, 1991 at a meeting at which a quorum was present with a vote of 1,395.5 FOR; -0- AGAINST; 328.5 NOT VOTING; and 02 ABSENT, pursuant to the powers vested in the Council by Section 2 (a) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 5, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Mary Ann Antone  
Mary Ann Antone, Legislative Chairwoman

6th day of November, 1991

ATTEST:

Teresa M. Choyguha, Legislative Secretary

6th day of November, 1991

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 6<sup>th</sup> day of November, 1991 at 4:45 o'clock, P. M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Mary Ann Antone, Legislative Chairwoman

APPROVED on the 6 day of November, 1991

DISAPPROVED) at 5:24 o'clock, P. M.



JOSIAH MOORE, Chairman  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 7<sup>th</sup> day of November

91 at 10:03 o'clock, a. M.



Teresa M. Choyguha, Legislative Secretary

**AMENDMENT TO THE STATUTE CREATING THE  
OFFICE OF THE ATTORNEY GENERAL  
FOR THE TOHONO O'ODHAM NATION**

*Amend Section 3 (A) of the statute creating the Office of the Attorney General  
(Resolution No. 326-89) by adding the following at the end thereof:*

*The Attorney General shall also work with the Court Solicitor for the  
Judicial Branch, in conjunction with the Staff Attorney to the Chairman  
if appropriate, on legal matters involving action by or the involvement of  
the Judicial Branch, to promote cooperation and resolution of any  
potential conflicts or disagreements between the Judicial Branch and the  
Legislative Council or the Chairman's Office; provided, however, that  
such efforts shall be limited to subjects which the Attorney General is  
ethically permitted to discuss under the ethical standards referred to in  
Section 3 (L) or otherwise applicable, and shall not extend to pending  
cases in the Judicial Branch or other matters to the extent such  
discussions would be foreclosed by pertinent ethical responsibilities.*