

## **TITLE 20 – LEGAL**

### **CHAPTER 2 - OFFICE OF INDEPENDENT COUNSEL**

*Legislative History: Ordinance No. 03-89, "Ordinance Defining the Powers, Duties, and Authority of the Office of Independent Counsel," was ordained and the Nation's chairman's previous veto was overridden by Resolution No. 305-89 on September 19, 1989. (Resolution No. 305-89 (overriding veto) passed by a two-thirds majority but was not signed by the Chairman of the Nation.)*

ORDINANCE DEFINING THE POWERS, DUTIES, AND AUTHORITY  
OF THE OFFICE OF INDEPENDENT COUNSEL

ORDINANCE NO. 03-89

1 WHEREAS, the Legislative Council has by Resolution No. 169-89  
2 established the Office of Independent Counsel; and

3 WHEREAS, the scope of prosecutorial jurisdiction must be adequate  
4 to assure full investigative and prosecutorial authority  
5 with respect to any matter which the Legislative Council  
6 may refer to the Office of Independent Counsel; and

7 WHEREAS, the prosecutorial jurisdiction of Independent Counsel  
8 shall include authority to investigate and prosecute all  
9 crimes that may be referred to the Office of Independent  
10 Counsel by the Legislative Council for investigation or  
11 prosecution in accordance with the provisions of this  
12 ordinance, including perjury, obstruction of justice,  
13 intimidation of witnesses, abuse of office and such  
14 other crimes contained in the laws or ordinances of the  
15 Tohono O'Odham Nation.

16 NOW, THEREFORE, BE IT ORDAINED by the Tohono O'Odham Legislative  
17 Council that:

18 A. The authority and duties of the Independent Counsel,  
19 notwithstanding any other provision of law, shall  
include:

- 20 (1) power to exercise all investigative and  
21 prosecutorial functions;
- 22 (2) authority to participate in court proceedings and  
23 engage litigation, including civil and criminal  
24 matters;
- 25 (3) unless otherwise directed by the Legislative  
26 Council, authority to appeal any decision of a  
27 court in any case or proceeding in which such  
28 Independent Counsel participates in an official  
29 capacity;
- 30 (4) power to review all documentary evidence  
31 available from any source;
- 32 (5) authority to contest the assertion of any  
testimonial privilege;
- (6) authority to make application to any appropriate  
court for a grant of immunity to any witness,  
consistent with applicable statutory  
requirements, or for warrants, subpoenas or other  
court orders;

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- 1 (7) power to initiate and conduct prosecutions in a  
2 court of competent jurisdiction, issuing and  
3 signing complaints, and handling of all aspects  
4 of any case, in the name of the Tohono O'odham  
5 Nation;
- 6 (8) authority to report to, and to consult and  
7 cooperate with the prosecuting attorney of the  
8 Tohono O'odham Nation and the prosecuting  
9 attorneys of other jurisdictions, including the  
10 United States Attorney, concerning any possible  
11 violations of law which may be revealed by the  
12 investigation with respect to which Independent  
13 Counsel is appointed, including violations of law  
14 which may not directly relate to the purpose of  
15 the investigation.

16 B. Payment of Costs for Office

17 All costs relating to the establishment and  
18 operation of the Office of Independent Counsel shall  
19 be paid from funds appropriated by the Legislative  
20 Council and pursuant to a budget for the Office of  
21 Independent Counsel adopted by the Legislative  
22 Council at the time it certifies to the Chief Judge,  
23 or Senior Judge, of the Tohono O'odham Courts that  
24 it has reason to believe a law of the Nation has  
25 been violated and that an Independent Counsel should  
26 be appointed in accordance with the provisions of  
27 paragraph E.

28 C. Additional Staff

29 The Independent Counsel may appoint, fix the  
30 compensation and assign the duties of such other  
31 employees as such Independent Counsel considers  
32 necessary, including investigators, attorneys or  
consultants, subject to any limitations set in the  
Special Counsel contract and in the budget of the  
Office of Independent Counsel.

33 D. Independence of Office

34 The office of Independent Counsel and the person(s)  
35 appointed by him shall be separate and independent  
36 of any other similar prosecution agency.

37 E. Appointment, Qualifications of and Contracting for  
Independent Counsel

- 38 (1) Whenever the Legislative Council has reason to  
39 believe that any present or former elected or  
40 appointed public official or judge of the  
41 Nation has violated any law of the Nation while  
42 purporting to perform the duties of office, it  
43 shall so certify the matter in writing,  
44 including the basis therefore and the nature of  
45 the alleged offense, to the Chief Judge of the  
46 Tohono O'odham Courts (unless the Chief Judge  
47 is the object of the accusation, or is  
48 involved in the matters from which the

basis

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1 accusation arises, in which case the  
2 certification shall be to the Judge of the  
3 Tohono O'Odham Courts with the most seniority  
4 other than the Chief Judge). Upon receipt of  
5 such certification, the Chief Judge (or the  
6 Senior Judge, if applicable) shall designate a  
7 Special Committee consisting of one Associate  
8 Judge of the Tohono O'Odham Courts, one member  
9 of the Legislative Council and the head of one  
10 of the executive departments of the Nation,  
11 none of whom shall have any connection with or  
12 involvement in the matters from which the  
13 accusation arises, which Committee shall select  
14 and appoint an Independent Counsel under the  
15 provisions of this Ordinance.

16 (2) The Independent Counsel shall be an attorney or  
17 firm knowledgeable of Indian law who has  
18 demonstrated experience to conduct  
19 investigations and prosecutions in a prompt,  
20 responsible and cost-effective manner.

21 (3) Upon its selection of the Independent  
22 Prosecutor, the Committee shall negotiate a  
23 Special Counsel contract with the attorney or  
24 firm selected, which contract shall set out in  
25 detail the scope of the Independent  
26 Prosecutor's jurisdiction and budget. The  
27 contract negotiated between the Special  
28 Committee and the Independent Counsel shall be  
29 executed on behalf of the Nation by the members  
30 of the Special Committee, or any two of them,  
31 and shall be submitted to the Bureau of Indian  
32 Affairs for approval. No other approval by the  
Nation shall be required to make the contract a  
valid, binding contract with the Nation.

(4) The Special Counsel Contract shall be subject  
to and shall incorporate by reference all of  
the terms and provisions of this ordinance and  
of the budget established for the Office of  
Independent Counsel by the Legislative Council,  
and the Independent Counsel shall be bound  
thereby in the execution of his duties.

23 F. Custody of Records

24 Upon the termination of the office of Independent  
25 Counsel, all records and documents which have been  
26 received and created shall be transferred to and  
27 become a record of the Tohono O'Odham Courts.

28 G. Legislative Oversight

29 (1) The appropriate committee of the Legislative  
30 Council shall have the legislative oversight  
31 over the Office of Independent Counsel.

32 (2) The Independent Counsel shall submit to the  
Legislative Council such statements or reports  
on the activities of the Office of Independent  
Counsel as may be provided for in his Special  
Counsel contract.

H. Removal of an Independent Counsel

An Independent Counsel appointed pursuant hereto may be removed from office only by action of the Legislative Council upon the recommendation of the appropriate committee of the Legislative Council having legislative oversight over the Office of Independent Counsel and a finding of good cause, physical disability, mental incapacity or any other condition that substantially impairs the performance of duties.

I. Termination of Office

The Office of Independent Counsel shall terminate when the investigation of all matters within the prosecutorial jurisdiction of such Independent Counsel, and any resulting prosecutions, have been completed or substantially completed, at which time the Independent Counsel shall file a final report with the Legislative Council.

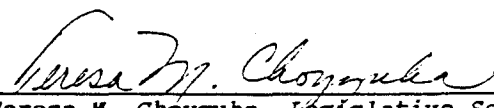
The foregoing Ordinance was passed by the Tohono O'odham Council on the 14th day of August, 1989 at a meeting at which a quorum was present with a vote of 734.0 for; 555.0 against; 435.0 not voting; and 02 absent, pursuant to the powers vested in the Council by Sections 1 (c)(6) and 1 (d) of Article 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).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Edward D. Manuel, Legislative Chairman

14<sup>th</sup> day of September, 1989.

ATTEST:

  
Teresa M. Choyguha, Legislative Secretary

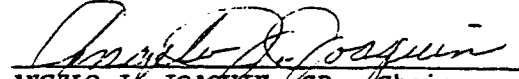
14<sup>th</sup> day of September, 1989.

Said Ordinance was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 14<sup>th</sup> day of September, 1989, at 5:00 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.

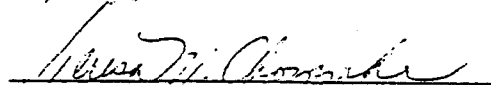
TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Edward D. Manuel, Legislative Chairman

[ ] APPROVED ) on the 18 day of Sept., 1989.  
[X] DISAPPROVED ) at 2:25 o'clock, P..M.

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

Returned to the Legislative Secretary on the 18<sup>th</sup> day of  
September, 1989, at 4:55 o'clock, P..M.

  
Teresa M. Choyguha  
Legislative Secretary

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RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Override Veto of Ordinance No. 03-89 "Defining the  
Powers, Duties, and Authority of the Office of  
Independent Counsel")

RES. NO. 305-89

1  
2 WHEREAS, the Tohono O'Odham Legislative Council did by Ordinance  
3 No. 03-89 define the Powers, Duties, and Authority of  
4 the Office of Independent Counsel; and

5 WHEREAS, upon presentation of Ordinance No. 03-89 to the Chairman  
6 of the Tohono O'Odham Nation he did disapprove thereof  
7 and returning it to the Council with his objections in  
8 accordance with the provisions of Article VII, Section 5  
9 of the Constitution of the Tohono O'Odham Nation; and

10 WHEREAS, the Tohono O'Odham Legislative Council has reviewed the  
11 Chairman's objections and after consideration again  
12 voted to pass Ordinance No. 03-89.

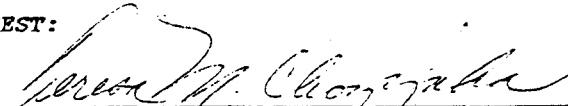
13 NOW, THEREFORE, BE IT RESOLVED that the Tohono O'Odham  
14 Legislative Council does hereby override the Chairman's  
15 veto of Ordinance No. 03-89, by a vote of two-thirds  
16 (2/3) of the votes cast 1,066.0 .

17  
18 The foregoing resolution was presented to the Tohono O'Odham  
19 Legislative Council on the 19th day of September, 1989, at a  
20 meeting at which a quorum was present and, by a vote of 1,126.0  
21 for; 473.0 against; 125.0 not voting; and 01 absent, was  
22 passed by a majority of at least two-thirds (2/3) of the votes  
23 cast and became law as provided in Section 5 of Article VII of  
24 the Constitution of the Tohono O'Odham Nation.

25 TOHONO O'ODHAM LEGISLATIVE COUNCIL

26   
27 Edward D. Manuel, Legislative Chairman

28 ATTEST:

29   
30 Teresa M. Choyguha, Legislative Secretary

31 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

32  
Angelo J. Joaquin, Sr., Chairman  
TOHONO O'ODHAM NATION