

TITLE 21 - LIQUOR

CHAPTER 2 - ALCOHOLIC BEVERAGES REGULATIONS

Legislative History: Resolution No. 04-514, "Exempting the Tohono O'odham Gaming Enterprise (Formerly known as the Tohono O'odham Gaming Authority) from Additional Provisions of Article III of Ordinance 05-82, and Adopting Amended Regulations Pursuant to Article IV, Section 2(K) of Ordinance 05-82," was approved on October 25, 2004.

Related History: The regulations adopted by Resolution No. 04-514 superceded those previously adopted by Resolution No. 01-119, "Exempting the Tohono O'odham Gaming Authority from the provisions of Article III, Sections (2) and (4) of Ordinance 05-82, and adopting regulations pursuant to Article IV, Section 2(K) of Ordinance 05-82," which was passed by the Tohono O'odham Legislative Council on March 9, 2001, presented to the Nation's Chairman on March 9, 2001, and returned unsigned on March 15, 2001.

Tohono O'odham Nation

Alcoholic Beverages Licensing and
Control Regulations

October ____, 2004

Alcoholic Beverages Licensing and Control Regulations

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Tohono O'odham Nation

Alcoholic Beverages Licensing and Control Regulations

Chapter 1. Definitions.

Section 1.1. Purpose. These regulations have been adopted in accordance with Article IV, Section 2(K), of the Tohono O'odham Nation's Alcoholic Beverages Licensing and Control Ordinance (the "Ordinance").

Section 1.2. Definitions. For purposes of these Regulations:

1.2.1. "Act of violence" means (i) an incident consisting of a riot, a brawl, or a disturbance in which bodily injuries are sustained by any person and such injuries would be obvious to a reasonable person, (ii) tumultuous conduct of sufficient intensity as to require the intervention of a peace officer to restore normal order, or (iii) an incident in which a weapon is brandished, displayed, or used.

1.2.2. "Beer" means any beverage obtained by the alcoholic fermentation, infusion, or decoction of barley malt, hops, or other ingredients not drinkable, or any combination of them.

1.2.3. "Broken package" means any container of liquor on which the United States tax seal has been broken or removed, or from which the cap, cork, or seal placed thereupon by the manufacturer has been removed.

1.2.4. "Control" means the power to direct or cause the direction of the management and policies of an applicant, licensee, or controlling person, whether through the ownership of voting securities or a partnership interest, by agreement, or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten per cent or more of the outstanding voting securities of the applicant, licensee, or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee, or controlling person. In the case of a partnership, control is presumed to mean the general partner or a limited partner who holds ten per cent or more of the voting rights of the partnership. For the purposes of determining the percentage of voting securities owned, controlled, or held by a person, there shall be aggregated with the voting securities attributed to the person the voting securities of any other person directly or indirectly controlling, controlled by, or under common control with the other person, or by an officer, partner, employee, or agent of the person, or by a spouse, parent, or child of the person. Control also is presumed to exist if a creditor of the applicant, licensee, or controlling person holds a beneficial interest in ten per cent or more of the liabilities of the licensee or controlling person.

1.2.5. "Controlling person" means a person directly or indirectly possessing control of an applicant or licensee.

1.2.6. "Distilled spirits" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, fruits preserved in ardent spirits, and any alcoholic mixture or preparation, whether patented or otherwise, which may in sufficient quantities produce intoxication.

1.2.7. "Employee" means any person who performs any service on licensed premises on a full-time, part-time, or contract basis with consent of the licensee, whether the person is denominated an employee, independent contractor, or otherwise. Employee does not include a person exclusively on the premises for musical or vocal performances, for repair or maintenance of the premises, or for the delivery of goods to the licensee.

1.2.8. "Legal drinking age" means the age of twenty-one years or older.

1.2.9. "License" means a license issued under the provisions of the Ordinance.

1.2.10. "License fees" means fees collected under the provisions of the Ordinance for license applications, license renewals, and license transfers between persons or locations.

1.2.11. "Licensee" means a person who has been issued a license under the provisions of these Regulations, including a special event licensee.

1.2.12. "Liquor" means spirituous liquor.

1.2.13. "Liquor Licenses and Control Commission" means the Tohono O'odham Liquor Licenses and Control Commission.

1.2.14. "Nation" means the Tohono O'odham Nation.

1.2.15. "Non-Sanctioning District" means a District of the Nation that has not sanctioned the introduction, sale, possession, and consumption of liquor on lands within the exterior boundaries of the District in conformity with the Ordinance.

1.2.16. "Occupant" means a person who has legal possession or the legal right to exclude others from an unlicensed premises.

1.2.17. "Obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly

uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

1.2.18. "Off-sale retailer" means any person operating a bona fide regularly established retail liquor store selling liquor and any established retail store selling commodities other than liquor and engaged in the sale of liquor only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

1.2.19. "On-sale retailer" means any person operating an establishment where liquor is sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

1.2.20. "Person" includes a partnership, limited liability company, association, company, or corporation, as well as a natural person.

1.2.21. "Premises" or "licensed premises" means the area from which a licensee is authorized to sell, dispense, or serve liquor under the provision of its license.

1.2.22. "Repeated acts of violence" means two or more acts of violence occurring within seven (7) days, three or more acts of violence occurring within thirty (30) days, or acts of violence occurring with any other similar frequency which the Commission determines to be unusual or deserving of review.

1.2.23. "Sanctioning District" means a District of the Nation that has sanctioned the introduction, sale, possession, and consumption of liquor on lands within the exterior boundaries of the District in conformity with the Ordinance.

1.2.24. "Sell" includes soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, keeping with intent to sell, or trafficking in liquor.

1.2.25. "Spirituous liquor" includes ale, beer, distilled spirits, any malt liquor or malt beverage, porter, wine, and beverages containing more than one-half of one per cent ($\frac{1}{2}\%$) of alcohol by volume.

1.2.26. "Voting securities" means any securities presently entitling the owner or holder of the securities to vote for the election of directors of an applicant, licensee, or controlling person.

1.2.27. "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage

fortified with grape brandy and containing not more than twenty-four per cent of alcohol by volume.

Chapter 2. Underage Persons.

Section 2.1. A licensee, an employee, or any other person who questions or has reason to question whether a person ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure the serving or delivery of liquor is under the legal drinking age shall require the person to exhibit a written instrument of identification and may require the person on a card to be retained by the licensee to sign the person's name, the date, and the number of such identification. The following written instruments are the only acceptable types of identification:

2.1.1. An unexpired driver license issued by any state or Canada, provided such license includes a picture of the licensee.

2.1.2. A nonoperating identification license issued by the State of Arizona under A.R.S. § 28-3165.

2.1.3. An armed forces identification card.

2.1.4. A valid unexpired passport or border crossing identification card which is issued by a government or voter card issued by the government of Mexico and which contains a photograph of the person and the date of birth.

Section 2.2. A licensee, an employee, or any other person who sells, gives, serves, or furnishes liquor to a person who is under the legal drinking age without having recorded and retained a record of the person's age or a dated and signed photocopy of the instrument of identification exhibited as prescribed by Section 2.1 is deemed to have constructive knowledge of the person's age.

Section 2.3. A person who acts under a program of testing compliance with the Ordinance that is approved by the Commission is not in violation of these Regulations.

Section 2.4. Law enforcement agencies may use persons who are under the legal drinking age to test compliance with the Ordinance by licensees suspected of violating the Ordinance. A person who is under the legal drinking age and who purchases or attempts to purchase liquor under the direction of a law enforcement agency under this subsection is immune from prosecution for that purchase or attempted purchase. Law enforcement agencies may use a person under the legal drinking age under this subsection only if:

2.4.1. The person is at least fifteen but not more than nineteen years of age.

2.4.2. The person is not employed on an incentive or quota basis.

2.4.3. The person's appearance is that of a person who is under the legal drinking age.

2.4.4. A photograph of the person is taken no more than twelve hours before the purchase or attempted purchase. The photograph shall accurately depict the person's appearance and attire. A licensee or an employee of a licensee who is cited for selling liquor to a person under the legal drinking age under this subsection shall be permitted to inspect the photograph immediately after the citation is issued. The person's appearance at any trial or administrative hearing that results from a citation shall not be substantially different from the person's appearance at the time the citation was issued.

2.4.5. The person places, receives, and pays for the person's order of liquor. An adult shall not accompany the person onto the premises of the licensee.

2.4.6. The person does not consume any liquor.

Chapter 3. Unlawful Acts.

Section 3.1. It shall be a violation of these Regulations:

3.1.1. For a person to fail to comply with any provision of these Regulations;

3.1.2. For a person under the legal drinking age to misrepresent the person's age to any person by means of a written instrument of identification with the intent to induce a person to sell, serve, give, or furnish liquor contrary to law.

3.1.3. For a person under the legal drinking age to solicit another person to purchase, sell, give, serve, or furnish liquor contrary to law.

3.1.4. For a person to knowingly influence the sale, giving, or serving of liquor to a person under the legal drinking age by misrepresenting the age of such person or to order, request, receive, or procure liquor from any licensee, employee, or other person with the intent of selling, giving, or serving it to a person under the legal drinking age.

3.1.5. For a person who is of legal drinking age and who is an occupant of unlicensed premises to knowingly allow a gathering on the unlicensed premises of two or more persons whom he knows or should know are under the legal drinking age, are in possession of or consuming liquor on the unlicensed premises, and are neither:

3.1.5.1.1 Members of the immediate family of such person.

3.1.5.1.2. Permanently residing with such person.

3.1.6. Except as otherwise provided by law, for a person to buy for resale, sell, or deal in liquor on lands under the jurisdiction of the Nation without first having procured a license duly issued by the Commission.

3.1.7. For a person to buy for resale, sell, or deal in liquor on lands under the jurisdiction of the Nation without complying with the Ordinance and these Regulations.

3.1.8. For a person to fail to comply with the laws applicable under 18 U.S.C. § 1161.

3.1.9. For any licensee to purchase liquor from any person other than a solicitor or salesman of a wholesaler licensed by the State of Arizona.

3.1.10. Except as provided in Sections 3.1.11 and 3.1.12, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age, or for a person under the legal drinking age to buy, receive, have in possession, or consume, liquor. The provisions of this subsection shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package, or carry merchandise, including liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than liquor.

3.1.11. For a licensee to employ a person under the age of nineteen years to sell or dispose of liquor. The provisions of this subsection shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package, or carry merchandise, including liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than liquor.

3.1.12. For an on-sale retail licensee to employ a person under the age of nineteen years in any capacity connected with the handling of liquor. This subsection does not prohibit the employment by an on-sale retailer of a person under the age of nineteen years who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items, and helps clean up the premises.

3.1.13. For a licensee or employee to knowingly permit any person on or about the licensed premises to give or furnish any liquor to any person under the age of twenty-one or knowingly permit any person under the age of twenty-one to have in the person's possession liquor on the licensed premises.

3.1.14. For a person under the legal drinking age to use a fraudulent or false written instrument of identification or identification of another person or to use a valid license or identification of another person to gain access to a licensed establishment.

3.1.15. For a licensee, when engaged in waiting on or serving customers, to consume liquor or for a licensee or on-duty employee to be on or about the licensed premises while in an intoxicated or disorderly condition.

3.1.16. For an employee of a retail licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for himself, or consume liquor, except that an employee of a licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may give liquor to or purchase liquor for any other person.

3.1.17. For a licensee or other person to serve, sell, or furnish liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for a period of time of not to exceed thirty minutes after the state of obvious intoxication is known or should be known to the licensee in order that a non-intoxicated person may transport the obviously intoxicated person from the premises.

3.1.18. For an on-sale or off-sale retail licensee or an employee of such licensee to sell, dispose of, deliver, or give liquor to a person between the hours of 2:00 a.m. and 6:00 a.m. on weekdays and 2:00 a.m. and 10:00 a.m. on Sundays.

3.1.19. For an on-sale retail licensee or an employee of such licensee to allow a person to consume or possess liquor on the premises between the hours of ~~1:15~~ ^{2:30} a.m. and 6:00 a.m. on weekdays, and 2:30 a.m. and 10:00 a.m. on Sundays.

3.1.20. For an on-sale retail licensee to permit an employee or for an employee to solicit or encourage others, directly or indirectly, to buy the employee drinks or anything of value in the licensed premises during the employee's working hours. No licensee shall serve employees or allow a patron of the establishment to give liquor to, or to purchase liquor for or drink liquor with, any employee during the employee's working hours.

3.1.21. For an off-sale retailer or employee to sell liquor except in the original unbroken container, to permit liquor to be consumed on the premises, or to knowingly permit liquor to be consumed on adjacent property under the licensee's exclusive control.

3.1.22. For an on-sale retail licensee or employee to allow a person under the legal drinking age to remain in an area on the licensed premises, during those hours in which its primary use is the sale, dispensing, or consumption of alcoholic beverages, after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. A licensee may designate an area of the licensed premises as an area in which liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical barrier and at no time will the underage persons have access to the area in which liquor is sold or consumed. This subsection does not apply:

3.1.22.1. If the person under the legal drinking age is accompanied by a spouse, parent, or legal guardian of legal drinking age or is an on-duty employee of the licensee.

3.1.22.2. To the area of the premises used primarily for the serving of food during the hours when food is served.

3.1.23. For an on-sale retail licensee or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of liquor beverages during any set period of time for a fixed price, to deliver more than thirty-two ounces of beer, one liter of wine, or four ounces of distilled spirits in any liquor drink to one person at one time for that person's consumption, or to advertise any practice prohibited by this subsection.

3.1.24. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination or to comply with a lawful subpoena.

3.1.25. For any person other than a peace officer, a licensee, or an employee of a licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retail establishment knowing such possession is prohibited. This subsection shall not be construed to include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume, or possess liquor. This subsection shall not apply to hotel or motel guest room accommodations nor to the exhibition or display of a firearm in conjunction with a meeting, show, class, or similar event.

3.1.26. For a licensee or employee to knowingly permit a person in possession of a firearm other than a peace officer, a licensee, or an employee of a licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell, or furnish liquor to a person in possession of a firearm while on the licensed premises of an on-sale retail establishment. This subsection shall not apply to hotel or motel guest room accommodations nor to the exhibition or display of a firearm in conjunction with a meeting, show, class, or similar event. It shall be a defense to action under this

subsection if the licensee or employee requested assistance of a peace officer to remove such person.

3.1.27. For a licensee or employee to knowingly permit liquor to be removed from the licensed premises, except in the original unbroken package. This subsection shall not apply to a person who removes a bottle of wine which has been partially consumed in conjunction with a purchased meal from the licensed premises if the cork is reinserted flush with the top of the bottle.

3.1.28. For a person to consume liquor in a public place, thoroughfare, or gathering. The license of a licensee permitting a violation of this subsection on the premises shall be subject to revocation. This subsection does not apply to the sale of liquor on the premises of and by an on-sale retail licensee. This subsection also does not apply to a person consuming beer from a broken package in a public recreation area, at a community feast house, park, or meeting place in accordance with the customs of the community, or on private property with permission of the owner or lessor or on the walkways surrounding such private property.

3.1.29. For a person to have possession of or to transport liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States, the Nation, or the State of Arizona.

3.1.30. For a licensee, employee, or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.

3.1.31. For a licensee to fail to report an occurrence of an act of violence to either the Commission or a law enforcement agency.

3.1.32. For a licensee to fail to pay any license fees, taxes, penalties, or interest imposed by the Tohono O'odham Nation on the licensee.

3.1.33. For any person to intentionally make any false statements to the Commission, whether in an application or otherwise.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Exempting the Tohono O'odham Gaming Enterprise (Formerly known as the Tohono O'odham Gaming Authority) from Additional Provisions of Article III of Ordinance 05-82, and Adopting Amended Regulations Pursuant to Article IV, Section 2(K) of Ordinance 05-82)

RESOLUTION NO. 04-514

1 **WHEREAS, on April 6, 1982, the Papago Tribal Council enacted the Alcoholic Beverages Licensing**
2 **and Control Ordinance as Ordinance No. 05-82 (the "Ordinance") for the regulation**
3 **of the introduction, sale, possession and consumption of alcoholic beverages within**
4 **the exterior boundaries of the Nation; and**

5 **WHEREAS, in accordance with 18 U.S.C. § 1161, the United States Secretary of the Interior**
6 **published on October 27, 1982, in the Federal Register his approval of the Ordinance**
7 **(47 Fed. Reg. 47687); and**

8 **WHEREAS, by Resolution No. 93-311, the Legislative Council adopted the Charter of the Tohono**
9 **O'odham Gaming Authority as the entity of the Nation charged with developing,**
10 **operating and maintaining the Nation's gaming facilities; and**

11 **WHEREAS, by Resolution 01-119, the Legislative Council authorized the Gaming Authority to**
12 **offer spirituous liquors for sale to patrons of the Nation's gaming facilities located**
13 **within Districts which have sanctioned pursuant to Article I, Section 4 of the**
14 **Ordinance, the introduction, sale, possession and consumption of spirituous liquors**
15 **within the boundaries of a sanctioning District and exempted the Gaming Authority**
16 **from the provisions of Article III, Sections (2) and (4) of the Ordinance, which require**
17 **licensing by the commission and purchasing from stores established by the**
18 **commission; and**

19 **WHEREAS, the Legislative Council found that the above-stated exemption from the provisions**
20 **of Article III, Sections (2) and (4) of the Ordinance did not impair or interfere with the**
21 **administration by the commission of the regulation of spirituous liquors in**
22 **accordance with the Ordinance; and**

23 **WHEREAS, by Resolution 01-119, the Legislative Council adopted Alcoholic Beverage Licensing**
24 **and Control Regulations (the "Regulations"), pursuant to Article VII, Section 2(K) of**
25 **the Ordinance and required the Gaming Authority to comply with those Regulations;**
26 **and**

27 **WHEREAS, by Resolution 04-513, the Legislative Council amended the Charter of the Gaming**
28 **Authority to change its name to the Tohono O'odham Gaming Enterprise; and**

RESOLUTION NO. 04-514

(Exempting the Tohono O'odham Gaming Enterprise (Formerly known as the Tohono O'odham Gaming Authority) from Additional Provisions of Article III of Ordinance 05-82, and Adopting Amended Regulations Pursuant to Article IV, Section 2(K) of Ordinance 05-82)

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1 WHEREAS, because Arizona has changed its liquor laws to allow liquor to be served for an
2 additional hour, resulting in an inconsistency among Arizona's laws and the
3 Ordinance and the Regulations, it is in the interests of the Nation to amend the
4 Regulations to conform with this change in to Arizona law and to exempt the Gaming
5 Enterprise from additional provisions of Article III of the Ordinance that are
6 inconsistent with the amended Regulations and Arizona's laws.

7 NOW, THEREFORE, BE IT RESOLVED THAT:

- 8 1. The provisions of Article III, Sections (5), (6), (9), (11), (12), and (14) of the
9 Ordinance shall not apply to the Tohono O'odham Gaming Enterprise with
10 respect to its sale of spirituous liquors in the original container and in individual
11 portions for consumption on the premises of gaming facilities operated by the
12 Gaming Enterprise within a sanctioning District. If the Gaming Enterprise sells
13 spirituous liquors, it nonetheless shall comply with all regulations adopted
14 under the Ordinance applicable to on-sale retailers.
- 15 2. The regulations attached to this resolution as Exhibit A are adopted as
16 regulations of the Nation's Liquor Licenses and Control Commission under
17 Article IV, Section 2(K), of the Ordinance which shall supercede the Regulations
18 enacted by Resolution 01-119.

19 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 18TH Day
20 of OCTOBER, 2004 at a meeting at which a quorum was present with a vote of 2,533.4 FOR; 96.30
21 AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by
22 Section 1 (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono
23 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -
24 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
25 Stat. 984).

26
27 TOHONO O'ODHAM LEGISLATIVE COUNCIL

28 
29 _____
30 Isidro Lopez, Legislative Chairman

31
32 27 day of October, 2004
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RESOLUTION NO. 04-514

(Exempting the Tohono O'odham Gaming Enterprise (Formerly known as the Tohono O'odham Gaming Authority) from Additional Provisions of Article III of Ordinance 05-82, and Adopting Amended Regulations Pursuant to Article IV, Section 2(K) of Ordinance 05-82)

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ATTEST:

Rosita N. Ruiz
Rosita N. Ruiz, Legislative Secretary

22 day of October, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 22 day of October, 2004 at 8:47 o'clock, A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Isidro Lopez
Isidro Lopez, Legislative Chairman

APPROVED

on the 25th day of October, 2004

DISAPPROVED

at 3:15 o'clock, P.M.

Vivian Juan-Saunders
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 26 day of
October, 2004, at 5:02 o'clock, P.M.

Rosita N. Ruiz
Rosita N. Ruiz, Legislative Secretary