

Chapter 17. Civil Rights Act; Limited Waiver Sovereign Immunity

Legislative History.

This new chapter to the Fort McDermitt Law & Order Code was enacted by the Tribal Council on September 13, 1988.

Sec. 1. Limited Waiver Doctrine of Sovereign Immunity.

The governing body of the Fort McDermitt Paiute-Shoshone Tribe hereby waives, in limited fashion, the doctrine of sovereign immunity, empowering the judges of the Fort McDermitt Tribal Court to utilize its civil contempt powers against any tribal employee or officials, including members of the Tribal Council, who violates this Civil Rights Act. The limited waiver of the doctrine of sovereign immunity shall not be interpreted as granting the Tribal Court with power to entertain cases and controversies for money judgments or other cases or controversies which attempt to do more than guarantee the Fort McDermitt Tribe, its employees and officials, provide equal protection of the law and procedural due process guarantees set forth in this chapter and elsewhere in tribal law.

Sec. 2. Civil Rights Act.

The Fort McDermitt Tribe, its employees and officials, including the Tribal Council, shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the rights of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor;
- (g) Deny, at tribal expense, when judicial services contract monies are available, the assistance of a tribal court advocate for his defense if he cannot afford one otherwise, during periods when judicial services contract monies are not available, no person shall be denied the right at his own expense the assistance of counsel for his defense;
- (h) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000 or both;
- (i) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Sec. 3. Violating Civil Rights; Penalties.

Any person who shall violate any person's civil rights, as enumerated in section 2 of this chapter, shall be deemed guilty of an offense and upon conviction shall be fined an ordered removed from elected, hired or appointed office by the Tribal Court and shall not be eligible to again hold office as provided for in the Constitution or, if an appointed or hired position is held, for a period of two years. The maximum fine that may be assessed for a violation of this offense is \$1,000.

Sec. 4. Definitions.

- (a) "Constitution", as used in this chapter, means the Constitution and Bylaws of the Fort McDermitt Paiute-Shoshone Tribe.
- (b) "Violate", as used in this chapter, means any attempt or actual act in furtherance of breaching one of the enumerated provisions in section 2 of this chapter or the actual act of breaching one of the enumerated provisions.

Sec. 5. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or be found unconstitutional or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.