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LAW & ORDER CODE



*Of
The Rosebud Sioux Tribe*

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ROSEBUD SIOUX TRIBE
RESOLUTION NO. 91-173

WHEREAS, the Rosebud Sioux Tribe is recognized by the United States of America pursuant to the Indian Reorganization Act of 1934 as amended by an Act of June 15, 1935, which states: "Nothing in the Act...shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe..."; and

WHEREAS, the tribal governing body is the Tribal Council exercising power and authority under a Tribal Constitution adopted by a vote of tribal people on November 23, 1935; and

WHEREAS, the Tribal Constitution authorizes the Council by Article IV, Section 1(k) to pass and enforce ordinances to keep law and order, and administer justice by establishing a reservation court and defining its duties and powers; and

WHEREAS, the Tribal Judiciary Committee pursuant to Tribal Ordinance 80-03 adopted February 19, 1980, and amended June 6, 1988, has subject matter review and recommending authority under Section 8, K. "Revisions and codifications of the statutes of the Rosebud Sioux Tribe"; and

WHEREAS, the Tribal Law and Order Code, Title IV, Section 3 provides for amendment by ordinance, including (1) first and second readings at least seven days apart; (2) written amendments during readings to restart the process; (3) resolution for its final form on a roll call vote; (4) approval by the Agency Superintendent; (5) publication within 10 days in a designated newspaper; (6) effective date of 10 days after publication; and (7) recording and certificate of publication by the Tribal Secretary in the Tribal Ordinance Book; and

WHEREAS, the proposed statutory language was reviewed by the Judiciary Committee on May 28, 1991, and it recommended the attached Ordinance for approval by the Tribal Council; now

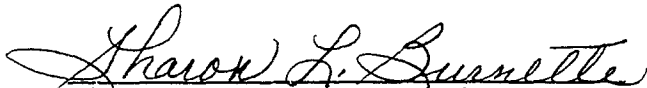
THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council hereby adopts Ordinance 91-03, entitled INTRODUCTION, ROSEBUD SIOUX TRIBEL LAW AND ORDER CODE (BLUE BOOK), and after a first reading on June 13, 1991, and a second reading in final form on July 11, 1991.

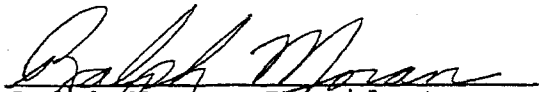
ROSEBUD SIOUX TRIBE
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CERTIFICATION

This is to certify that the above Resolution No. 91-173 was duly passed by the Rosebud Sioux Tribal Council in session for a first reading on June 13, 1991, by a vote of nine (9) in favor, zero (0) opposed and one (1) not voting. The second reading was held on July 11, 1991, and passed by a roll call vote of seven (7) in favor, zero (0) opposed and three (3) not voting. The said Resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:


Sharon L. Burnette, Secretary
Rosebud Sioux Tribe


Ralph Moran, President
Rosebud Sioux Tribe

INTRODUCTION

ROSEBUD SIOUX TRIBE LAW AND ORDER CODE

Section 1. CODE INTERPRETATION: This code shall be strictly interpreted and construed to fulfill the following purposes:

(a) to provide for the welfare, care and protection of the children and families and adults within the reservation court's authority,

(b) to preserve unity of the family, and to separate the child from his/her parents only when absolutely necessary, and to take into consideration Lakota Kinship relationships,

(c) to take such actions as may be imperative to prevent the abuse, neglect, abandonment, or delinquency of children, their families if in need of assistance, and incompetent adults,

(d) to provide services for children and their families and adults ranging from prevention to residential treatment with emphasis on prevention, early intervention and community-based alternatives,

(e) to guarantee the rights of and due process to the children, parents, guardians, extended family, care-providers, custodians of children, or other parties who come before the court under this law,

(f) to ensure that off-reservation courts return tribal children to the reservation by establishment of this law,

(g) to acknowledge the tribal child-rearing customs and traditions, and other tribal customs and traditions for the control of families and adults,

(h) to guarantee that children and their families and adults enjoy without hindrance freedom of religion, speech, press, assembly, conscience and association,

(i) to guarantee that children and their families and adults accused of any offense shall have a speedy and public trial, unless a closed trial is necessary to protect persons under the age of 18 years, to be informed of the nature and cause of the accusation, and to be confronted with witnesses against them,

(j) to guarantee that children and their families and adults accused of any offense have assistance of counsel and to demand trial by jury six persons for criminal trials and twelve persons for civil cases,

(k) to guarantee that children and their families and adults shall not be subject to the same offense to be twice put in jeopardy, nor be compelled in any criminal case to be a witness against themselves,

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ORDINANCE 91-03

(l) to guarantee that children and their families and adults shall not be subject to the same offense to be twice put in jeopardy, nor be compelled in any criminal case to be a witness against themselves, }

(m) to guarantee that children and their families and adults shall not be deprived of life, liberty, or property, without due process of law nor be denied equal protection of the law,

(n) to ensure that children and their families and adults shall be secure in their persons, houses, papers and effect against unreasonable search and seizures, and be served with warrants only upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized,

(p) to ensure that children and their families and adults shall not have their private property taken for a public use without just compensation,

(q) to ensure that children and their families and adults have a compulsory process for obtaining witnesses in their favor,

(r) to ensure that children and their families and adults shall not be sentenced for the conviction of any one offense to any penalty or punishment for a term of more than one year or a fine of more than \$5,000, or both,

(s) to ensure that children and families and adults shall not be subject to any bill of attainder or ex post facto law, and }

(t) to assure that children and families and adults shall have the right of appeal to the highest court of the Rosebud Sioux Tribe.

Section 2. TRIBAL COURTS AS PRESENTLY DEFINED: In the event no plan is presented on May 28, 1991 for the operation of the Tribal Courts, the Tribal Judiciary Committee is recommending the following plan of direction to the Tribal Council and upon its approval, it shall become part of the Tribal Code.

This plan will take precedence over previous actions of the Tribal Council, provided it does not conflict with the Tribal Constitution and By-Laws, Rosebud Sioux Tribe Law and Order Code (Blue Book), and Tribal Judiciary Committee Ordinance.

(a) Relevant powers of the Tribal President include:

Under the Article 1 of the By-Laws of the Tribal Constitution, the Tribal President shall manage and administer the affairs of the Tribe, including the supervision of tribal employees, subject to the resolutions, ordinances and instructions of Tribal Council. }

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Under the Rosebud Sioux Tribe Law and Order Code (Blue Book), Title Eight, Chapter 1 - Extradition - all requests for extradition are directed to the Tribal President before going to the chief tribal judge.

(b) Relevant powers of the Tribal Council include:

The Tribal Council consists of representatives from 8 districts who are elected to have all the powers of tribal government with authority over the administrative, legislative and justice systems as set forth in the Tribal Constitution.

Under Article III, Section 7, the Tribal Council may elect from within or without its number "such other officers as it may deem appropriate for a term of two years but not beyond the next general election" and they shall have no vote in council matters.

The Tribal Council has set a precedent under this section by the creation and election of a tribal attorney general as its chief law enforcement officer.

Under Article IV (s) of the Tribal Constitution, the Tribal Council may regulate the manner of making nominations and hold elections for tribal offices.

Under Article IV (t) of the Tribal Constitution, the Tribal Council may adopt resolutions regulating the procedure of itself, other tribal agencies and tribal offices.

Under Article IV, Section 1 (k), the Tribal Council may promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

The Tribal Council has approved a Tribal Law and Order Code that defines these duties and powers under Title Nine, Chapter 1 Courts, Judges and Court Personnel.

(c) Relevant powers of the Tribal Courts include:

Four tribal courts:

(1) Appellate Court, consisting of three justices, handles appeals from the Tribal Court and the Tribal Juvenile Court. It sets its own procedures.

(2) Tribal Court, consisting of a chief judge and two associate judges, is the court of general criminal and civil jurisdiction on the Rosebud Reservation.

It hears cases not specifically placed under other courts of the tribe and handles appeals from decisions of the Magistrate Courts and other Tribal Administrative bodies and agencies.

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Under Title 8, Chapter 1 of the Tribal Code, it reviews removal petitions for non-members before dismissing them or making a recommendation to the Tribal Council. Under Title 8, it sits as a small claims courts.

Under Title 10, Chapter 4 of the Tribal Code, when it hears appeals from the Tribal Liquor Commission ruling, all the tribal judges in office must sit as one body to hear a case.

Under Title 11, Chapter 4, it reviews and acts on appeals from the Tribal Tax Commission.

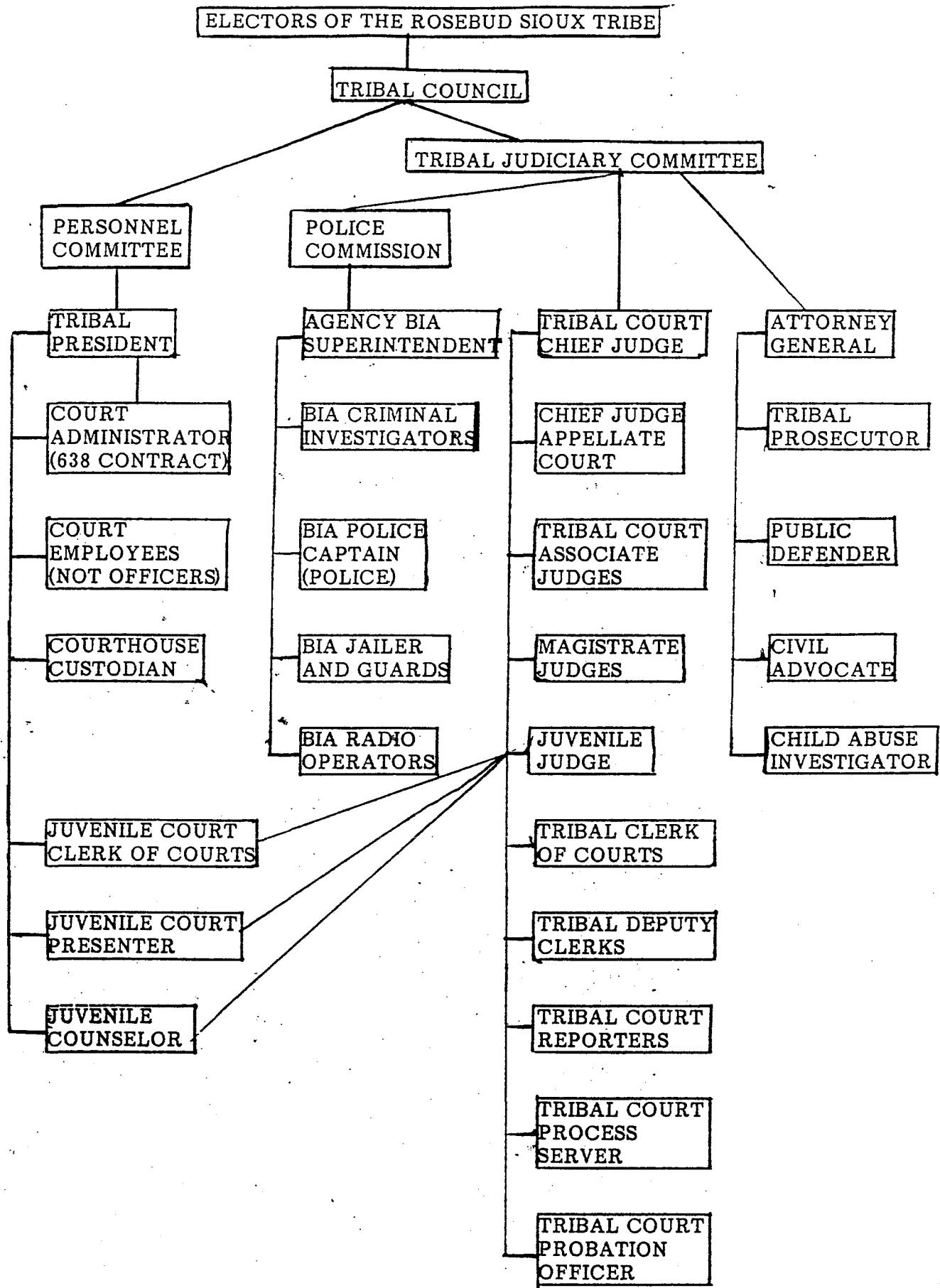
The Tribal Code does not generally give the court authority to handle cases resulting from actions of the Tribal Council, unless they are criminal in nature and unless civil action is authorized by federal or tribal law, or by the Tribal Constitution and By-Laws.

(3) Tribal Juvenile Court, consisting of one juvenile judge, handles all matters set forth in the Tribal Juvenile Code but is subject to the supervision and jurisdiction of the Tribal Code.

(4) Tribal Magistrate Court, consisting of a lay magistrate in each recognized tribal community, has jurisdiction over all criminal matters involving Class C offenses. It has no civil jurisdiction.

There appears to be no determination in the Tribal Code whether the Court Personnel are employees of the tribe or officers of the Tribe.

Section 7. CHAIN OF COMMAND: The following is the chain of command in the Tribal Courts and Police Systems:



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Court Personnel consists of appellate court justices, a chief judge, associate judges, a juvenile court judge, magistrate, clerk of courts, deputy clerks and juvenile clerk and may include a court reporter, a process server, a probation officer, a bailiff and a typist.

However, under the Tribal Juvenile Code, the Court personnel are referred to as employees whose compensation and terms of office are fixed by policies of Tribal Council and Administration.

(d) Relevant powers of the Tribal Judiciary Committee include:

Under Ordinance 80-03 as amended on June 10, 1988, the Judiciary Committee has recommending power to the Tribal Council as follows:

1. review of all budgets, contracts and proposals of the Tribal Court,
2. tribal courts and judges, prosecutor, public defenders, other attorneys and magistrates,
3. powers set forth in Title Nine, Chapter One of the Tribal Law and Order Code,
4. local courts, adult and juvenile, state, federal and international,
5. tribal jails, tribal police, Bureau of Indian Affairs police and their performances.

In general the Tribal Judiciary Committee selects Court Personnel and they are approved by the Tribal Council.

Under the Tribal Code, generally, the Judiciary Committee and Tribal Council approves the appointment, qualifications, term of office and compensation of Court Personnel.

However, under the Tribal Juvenile Code, the Juvenile Judge "with advice from the Court Administrator" shall appoint children's court counselors, presenting officers, probation officers and clerks as required.

It appears no where else in the Tribal Code is the term "Court Administrator" used.

Under Title Four, Chapter 1 of the Tribal Code, the Judiciary Committee or other committee appointed by the Tribal Council, annually, preferably in January, compiles a list of 50 persons from the tribal rolls for the tribal jury list for that year, and delivers it to the chief judge and clerk of courts for use in civil cases.

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However, under Title Seven, Chapter 1, the clerk of courts prepares a list of 225 eligible jurors, prorated from each community as nearly as possible, for use in criminal trials.

(e) Relevant powers of Tribal Judges include:

Under Title Nine, Chapter 1 of the Tribal Code, tribal judges generally administer justice but if there is no clerk, they can perform those duties and handle cash bail and bonds.

Chief judge shall be responsible for the administration of all courts, including the Juvenile Court judge (who then has administration of that court), supervised all probation and parole officers, assigns cases, manages the court's civil and criminal case calendar and business, and designates an associate judge to serve as chief judge in his absence.

Under Title Three, Chapter 1 of the Tribal Code, the Tribal Juvenile Judge follows the same rules as other tribal judges, and for training of personnel, he/she may receive and expend funds from Federal or State sources or private donation, enter into contracts and hire experts, and conduct programs.

(f) Relevant powers of the Tribal Clerk of Courts and Others include:

Under Title Nine, Chapter 1, generally the clerk of courts handles records, dockets, money from the court, and may help individual tribal members and their counsel in the drafting of documents incidental to the court proceedings. This person handles both the tribal court and the court of appeals.

Also under various Titles of the Code, this person is the recipient of civil and criminal complaints to be placed on the court's docket.

Under Title Three, Chapter 1 of the Tribal Code, the Juvenile Clerk of Courts has the same duties as the tribal court clerk of courts.

Juvenile Presenting Officer acts as the Tribal Prosecutor in this court.

Children's Court Counselor shall not serve as a tribal prosecutor, presenting officer or law enforcement official.

(g) Relevant powers of Attorneys and Lay Counsel include:

Under Title Nine, Chapter 2 of the Tribal Code, attorneys and lay counsel may practice in the court, but they can be denied for cause by the chief judge, with appeal rights to the Tribal Council.

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(h) Relevant powers of other officers include:

The Tribal Code does not generally address the positions of Tribal Prosecutor, Public Defender, Civil Advocate or other officers of this nature.

Under Title Eight, Chapter 1 of the Tribal Code, however, the Tribal prosecutor is the person designated as the recipient for requests for the removal of non-members from the reservation. He presents evidence to the Tribal Court regarding the requests.

Section 3. CONTRACT CONSIDERATIONS: Funds to operate the Tribal Courts are obtained through a Public Law 93-638 contract which has some strings of its own, but most of these can be negotiated out with the Bureau of Indian Affairs.

Section 4. DUTIES OF COURT OFFICERS, COURT PERSONNEL AND LAW ENFORCEMENT OFFICIALS: The duties of the Court officers shall be set by the chief tribal judge and the Judiciary Committee, duties of other Court Personnel by the tribal President and the Personnel Committee, and duties of the law enforcement personnel by the Bureau of Indian Affairs and the Tribal Council by mutual agreement.

Section 5. POLICE COMMISSIONS: The Commission shall consist of 12 commissioners including:

- (1) the chairperson of the Judiciary Committee who shall be the preceding officer of the Commission,
- (2) one person appointed by the BIA Agency Superintendent,
- (3) one person appointed by the Tribal President,
- (4) one person appointed by the Chief Judge, and
- (5) eight persons appointed by the Tribal Council with one representative from each tribal district.

It shall operate under a set of written procedures adopted by the Commission and approved by the Bureau of Indian Affairs and by the Tribal Council by mutual agreement.

Section 6. FURTHER DETAIL: Further powers of the Tribal President, Tribal Council, Tribal Judiciary Committee, tribal judges, tribal officers, court personnel, and others associated with the Tribal Courts are defined or clarified in the Tribal Code.