

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council by Resolution No. 11-87-320 acted to amend the White Mountain Apache Tribal Election Ordinance, Chapter 3 of the Government Code; and

WHEREAS, said amended Ordinance has been posted for the constitutionally required 10 day period for the purpose of inviting public comment prior to final passage; and

WHEREAS, there has been no public comment received regarding the modification of the proposed Tribal Election Ordinance; and

WHEREAS, the Tribal Council concludes that the Election Ordinance as proposed and posted should be finally passed by the Tribal Council and become effective immediately.

THEREFORE BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts the Tribal Election Ordinance No. 156 on this date effective immediately and that it hereby rescinds prior Election Ordinance No. 56 and 69.

BE IT FURTHER RESOLVED by the Tribal Council that it directs that the Tribal Council Secretary prepare a final version and draft of the ordinance and distribute it to the appropriate tribal officials including the Tribal Council and the Election Commission.

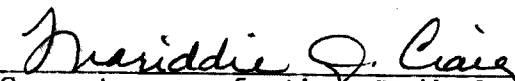
The foregoing resolution was on November 30, 1987, duly adopted by a vote of SIX for and ONE against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article VIII, Section 8 of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council

RECEIVED

JAN 6 1988

Fort Apache Indian Agency
Whiteriver, Arizona


Secretary of the Tribal Council

Chapter Three
ELECTIONS

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| Article | 1. General Provisions, §§3-1-1 through 3-1-3 |
| | 2. Supervisory Bodies, §§3-2-1 through 3-2-2 |
| | 3. Qualifications and Registration of Voters, §§
3-3-1 through 3-3-4 |
| | 4. Election Dates, 3-4-1 through 3-4-4 |
| | 5. Qualifications of and Filing by Candidates, §§
3-5-1 through 3-5-7 |
| | 6. Conduct of Elections, §§ 3-6-1 through 3-6-93 |
| | 7. Penal Provisions, 3-7-1 through 3-7-7 |

Cross References

Regulation of conduct of elections generally, see Article VIII of the Constitution and Bylaws of the White Mountain Apache Tribe.

Research References

American Jurisprudence, 2d

25 Am Jur 2d, Elections, § 1 et seq.

26 Am Jur 2d, Elections, § 183 et seq.

41 Am Jur 2d, Indians, §7.

Handbook of Federal Indian Law

F. Cohen, Handbook of Federal Indian Law 229-257, 639-672 (1982 ed.).

ARTICLE 1

GENERAL PROVISIONS

- | | |
|---------|------------------------------------|
| Section | 3-1-1. Purpose |
| | 3-1-2. Authority |
| | 3-1-3. Tenure of elected officials |

Research References

American Jurisprudence, 2d

25 Am Jur 2d, Elections, §§ 1-11.

§ 3-1-1. Purpose

This chapter is adopted for the purpose of establishing procedures for conducting all White Mountain Apache tribal elections for the election of the Chairman, Vice Chairman and all other Council Members of the Tribe as provided in Article VIII, of the Constitution and Bylaws of the Tribe.

§ 3-1-2. Authority

This title is enacted pursuant to Article VIII, Section 8 of the Constitution and Bylaws of the White Mountain Apache Tribe.

§ 3-1-3. Tenure of Elected Officials

Tenure of the Tribal Chairman, Vice Chairman, and Council members shall be a term of four (4) years from the date of election as provided in Article IV, Section 5 of the amended constitution and bylaws, except for vacancies that are filled in accordance with Article IX, Section 3 and of the Constitution and Bylaws.

ARTICLE 2

SUPERVISORY BODIES

Section 3-2-1. Tribal Election Commission
3-2-2. Tribal Election Board

Research References

American Jurisprudence, 2d
25 Am Jur 2d, Elections, § 39 et seq.

§ 3-2-1. Tribal Election Commission

(a) There shall be a Tribal Election Commission (hereinafter Commission) composed of six (6) members, and three (3) alternates appointed by the Tribal Council, who shall be responsible for administering all elections of the White Mountain Apache Tribe, and shall serve for a period from the day of appointment until six (6) months following the general election or for such term as extended by the Council. Said Commission shall be selected at the first Council session of the year preceding the election year. No elected official of the White Mountain Apache Tribe shall serve on the Commission. No candidate or regular employee of a candidate for office or person who is a member of the candidates immediate family, including spouse, son, daughter, mother, father, sister, or brother, shall serve on the Commission.

(b) The Commission shall have the authority to promulgate and enforce rules and regulations concerning any matter within the jurisdiction of the Commission as provided within the chapter. Such regulations shall have the force and effect of law of the White Mountain Apache Tribe. The Commission shall have

the authority to disqualify any candidate who does not meet the qualifications for the office sought.

(c) It shall be the responsibility of the Commission to appoint the Tribal Election Board officials and provide them with proper instructions for performing their duties.

(d) The Commission shall elect from its own membership, a chairman and other officers as deemed necessary.

(e) It shall be the duty of the Commission to prepare the official ballot or ballots.

(f) The Commission shall be responsible, upon approval of the Council, for the storage of and safekeeping of all election ballots both before and after the election.

(g) The regulations developed by the Commission shall be submitted for approval to the Council.

§ 3-2-2. Tribal Election Boards

(a) There shall be Election Boards to conduct the election at the voting places in each voting district. The Election Boards shall be appointed by the Commission. No elected official of the White Mountain Apache Tribe shall serve on an Election Board. No candidate or regular employee of a candidate for office or person who is a member of the candidate's immediate family including only spouse, son, daughter, mother, father, sister, brother shall serve on the Election Board.

(b) The board shall have the following specific duties:

(1) To ascertain that the name of each person requesting to vote is on the official voting list for the particular voting place.

(2) To see that only one ballot is cast by the voter himself; that the voting list is checked; and that the voter countersigns or appropriately checks his name on the register of persons voting.

(3) To refer any challenge of the right of a person to vote to the Commission, whose decision regarding the matter shall be final.

(4) To keep the ballot boxes locked at all times except when the ballots are being counted.

(5) To be responsible for the accurate counting of the ballots, and to make a tally thereof.

(6) To make a certified election return and post a copy thereof at the voting place.

(7) To preserve spoiled, mutilated and rejected ballots.

(8) To be responsible for all the ballots and the ballot boxes or other voting apparatus after the counting and mark the boxes or other voting apparatus with the name of the voting place and date of election. Provide for voting machines.

(9) To return the unused ballots, spoiled, mutilated and rejected ballots and locked ballot boxes to the Tribal Election Commission immediately following the election.

(c) No member of the Election Board shall leave the voting place during voting hours without permission of the Election Commission.

ARTICLE 3

QUALIFICATIONS AND REGISTRATION OF VOTERS

Section	3-3-1.	Eligibility of voters
	3-3-2.	Eligible Voters List
	3-3-3.	Eligibility Criteria
	3-3-4.	Voter Registration

American Jurisprudence, 2d
25 Am Jur 2d, Elections, § 52 et seq.

§ 3-3-1. Eligibility of Voters

A. Voter Registration Required: All members of the White Mountain Apache Tribe whose tribal membership is evidenced by enrollment in the records of the Tribal Vital Statistics Office, and who have reached the age of eighteen (18) years, shall be eligible to vote in tribal elections, provided they have registered for voting as set forth in this section. The Election Commission or Registrar has the authority to preregister those persons whose 18th birthday occurs between the close of registration and the day of the election.

3-3-2. Eligible Voters Lists.

Lists of the eligible voters of each District shall be prepared by the Election Commission. The corrected Eligible Voters List shall be posted at the polling place of the District at least 10 days prior to the election and a copy submitted to the Council at the same time.

3-3-3. Eligibility Criteria:

All enrolled members of the White Mountain Apache Tribe who have reached the age of eighteen years (18) are eligible to vote in Tribal Elections, provided that the following criteria are met:

- (a) Only those persons whose names appear on the list of eligible voters shall be allowed to vote in Tribal Elections.
- (b) Eligible voters may vote only in the district of their residence.
- (c) For the purpose of insuring proper voter registration, a voter's residence shall be determined as follows:
 - 1) The residence of a White Mountain Apache person is that place at which his place of abode is fixed and at which the voter intends to remain for an undetermined period and with no present intentions of removal from that place and to which, when he or she is absent, he or she intends to return.
 - 2) In the event that a person does not maintain a residence then his or her residence is presumed to be where his or her mother lives provided that the mother is an enrolled member of the White Mountain Apache Tribe. If residence cannot be determined by this method then the voters residence shall be presumed to be where the voters father resides, if the father is an enrolled member of the White Mountain Apache Tribe.
 - 3) In the event that the mother or father does not have a residence, then the voter's residence is presumed to be where the voter's mother owns farmland, and if the mother does not own farmland, then where the mother owns livestock, and if the voter's residence cannot be determined by this method, then the voter's residence shall be presumed to be where the father owns farmland, or where the father owns livestock.
 - 4) In the event that a voter's residence cannot be determined based on the above criteria, then said voter shall be registered in the district where the seat of tribal government is located.
 - 5) A White Mountain Apache person who is a registered voter does not lose his resident status for purposes of voting in Tribal Elections solely by his absence while employed off the Fort Apache

Indian Reservation or while a student attending school off of the Fort Apache Indian Reservation or while in the military services.

- 6) A White Mountain Apache person may only register in the district in which he or she has been a resident for at least 120 days prior to registration.

3-3-4. Voter Registration

- (a) There shall be a registration of all eligible voters. A permanent role of eligible voters shall be kept by the Election Commission. The Election Commission shall keep the register open during all business hours, beginning the day after each tribal election and continuing until 30 days prior to the date of the next election.
- (b) While the register is open any unregistered member of the White Mountain Apache Tribe, upon proving to the Election Commission, or any designated registrar, that he or she possesses the qualifications set forth in sub-section C above, shall be permitted to register.
- (c) The registrar shall issue to all voters registering a registration card which shall be in two (2) segments, each bearing the identical information. The registrar shall retain one segment for the records of the Election Commission and the other segment shall be given to the registered voter. The registration card shall bear the following information: name of the voter, social security number, date of birth, home address, polling place where they will be permitted to vote, and other pertinent information as may be required by the Election Commission. At the close of the registration period, an alphabetically arranged list of all persons registered to vote in each election district shall be prepared by the Office of Vital Statistics. The list shall be certified by the Election Commission as accurate, and shall constitute the eligible voters list.
- (d) Any person desiring to register, who is not permitted to register, may appeal in writing to the Election Commission at least 30 days prior to the next election. The Election Commission must rule on said appeal no later than 20 days prior to an election. All decisions of the Election Commission shall be final.
- (e) Cancellation of Registration. The Election Commission shall examine the eligible voters list containing the names of all eligible voters and add or remove the

names of all individuals as may be necessary to make the lists accurate.

- (f) The existing lists of eligible voters are accepted as they now exist. All new registration of voters or changes of registration must meet the criteria established by this ordinance.

ARTICLE 4

ELECTION DATES

Section	3-4-1.	Primary Election
	3-4-2.	Notice
	3-4-3	General Election
	3-4-4	Primary Election Voting; Selection of Candidates

§ 3-4-1. Primary Election.

There shall be a primary election which shall be held on the first Wednesday of February during an election year as established by Article VIII, Section 1 of the Amended Constitution and Bylaws of the White Mountain Apache Tribe.

§ 3-4-2. Notice.

At least sixty days before the date of a regular primary election, the Tribal Council Secretary shall prepare and post a notice in writing designating the offices for which candidates are to be nominated at the primary election.

§ 3-4-3. General Election.

On the first Wednesday of April of an election year as established in Article VIII, Section 1 of the Amended Constitution and Bylaws of the White Mountain Apache Tribe, a general election shall be held for the election of members of the Tribal Council whose terms expire during the year in which the election is being held.

§ 3-4-4 Primary Election Voting; Selection of Candidates.

(a) In the primary election, each registered voter shall be entitled to cast one vote for that person's choice among the candidates for the office of Chairman, Vice Chairman, and council member. Only those voters who are registered to vote in the District to which a Tribal Council Member is to be elected may cast a vote for the candidate to be elected from that District.

(b) The candidate receiving the highest number of votes for Chairman, Vice Chairman, and Tribal Council Member and the candidate receiving the next highest number of votes for

Chairman, Vice Chairman, or Tribal Council Member, shall be the candidates for Chairman, Vice Chairman, and Tribal Council Members in the general election.

(c) In each district that elects one council member, the two candidates receiving the highest number of votes shall be the candidates for council member in the general election. (d) In each district that elects two council members, the three candidates receiving the highest number of votes shall be the candidates for council member in the general election.

ARTICLE 5

QUALIFICATIONS OF AND NOMINATION OF CANDIDATES

§ 3-5-1. Qualifications of Candidates for Election to the Council Generally

Each candidate who desires to run for election to the Tribal Council shall meet the qualifications set forth in Article IV, Section 7 of the Constitution and Article II, Section I of the Bylaws.

§ 3-5-2. Chairman

The qualifications for Chairman shall be:

(1) The candidate for Chairman must be a resident of the Fort Apache Indian Reservation (FAIP).

(2) The candidate for Chairman shall satisfy all of the requirements of the Constitution of the White Mountain Apache Tribe, Article II, Section I of the Bylaws.

§ 3-5-3. Vice Chairman

The qualifications for Vice Chairman shall be the same as for the office of Chairman.

§ 3-5-4. Tribal Council

The qualifications for Council members shall be those established in Article II, Section 1, of the Bylaws.

§ 3-5-5. Nomination of Council Members

This Section 3-5-5 and Section 3-5-6 shall govern the nomination of candidates for election to the Tribal Council and no other method of nominating candidates shall be allowed. There

shall be no write in candidates. Pursuant to Article VIII, Section 6 of the Constitution of the White Mountain Apache Tribe, any member of the tribe who is a resident of the District from which he desires to be nominated, whose name is presented at least 45 days before the primary election, to the Secretary of the Tribal Council or to the Chairman of the Tribal Council, or in his absence to the Vice Chairman of the Tribal Council, by petitions signed by at least 5% of the resident voters of the district, of the age not less than 18 years, shall be declared by the Tribal Council to be regularly nominated as a council member and to be a candidate for the office of the council member as indicated in such petition. The Tribal Council Secretary shall post the names of all qualified candidates in a public place at least thirty days (30) prior to the primary election.

§ 3-5-6. Signing of Nomination Papers.

Each registered voter shall be entitled to sign only one nomination paper for the same council office unless more than one candidate is to be elected from the district to such office, and in that case, not more than the number of nomination papers equal to the number of candidates to be elected from the district to the office. Signatures of persons in violation of this section shall be disregarded in determining the validity of the nomination.

§ 3-5-7. Preparation of Ballots.

It shall be the responsibility of the Tribal Council Secretary to see that ballots are prepared for each of the districts to which a council member is to be elected. The printing of the ballots shall take place as soon as possible after all candidates have been certified by the Tribal Election Commission. Paper ballots upon which are printed the names of the candidates shall be used in the tribal elections. The upper portion of the ballot shall contain the name of the candidates for Chairman and Vice Chairman of the Tribal Council, the lower portion of the ballot shall contain the names of the candidates for members of the Tribal Council. The ballots shall be numbered consecutively and provided in consecutive numbers to each precinct. A box shall be provided opposite each name in which the voter may indicate his or her choice.

An adequate supply of ballots plainly marked, "Sample Ballots", and printed on a paper of different color from that of the ballots prepared for voting purposes shall be distributed and shall be posted in public places in each precinct in order to acquaint voters with the ballot and with voting procedures.

ARTICLE 6

CONDUCT OF ELECTIONS

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| | 3-6-2. | Special elections |
| | 3-6-3. | Electioneering |

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SUBARTICLE 3 Absentee Voting

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SUBARTICLE 4 Count and Return of Votes; Recounts and Runoffs

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Impossible.

ARTICLE 1

General Provisions

Research References

American Jurisprudence, 2d
25 Am Jur 2d, Elections, §§ 183-201, 374

§ 3-6-1. Official Election Dates

The following dates are the official dates pertaining to the elections of the White Mountain Apache Tribe:

(1) Registration of Voters. The cut-off date for registration to vote shall be 30 days before any election.

(2) Filing of Candidates Candidates may file nominating petitions for office from the 60th day prior to the primary through the 45th day prior to the primary election. Nominating petitions must be returned to the Tribal Council Secretary by the close of business on the 45th day prior to the primary election day.

(3) Primary Election. The Primary election shall be held on the first Wednesday of February of the election year.

(4) General Election. The General election shall be the 1st Wednesday of April of the election year.

(5) Swearing in of Elected Officials. The swearing in of the elected tribal officials, i.e., Chairman, Vice-Chairman, and Council, shall be the 1st Wednesday of May of the election year.

§ 3-6-2. Special Elections

Special elections shall be called by the Council for specifically stated purposes.

§ 3-6-3. Electioneering

No person shall be allowed to electioneer within two hundred (200) feet of the entrance to any polling location while an election is in progress, nor shall any person or persons, except election officials and other persons authorized by law, be allowed to approach the ballot box while an election is in progress or remain within 50 ft. of the polling place except

while actually voting. No written or printed material other than that provided by the Election Commission shall be publicly placed or exposed within two hundred (200) feet of the entrance to any polling location while an election is in progress. The Tribal Election Commission shall be charged with the responsibility of developing the policies on electioneering with the approval of the Council.

SUBARTICLE 2

Voting Generally

Cross References

Research References

American Jurisprudence, 2d

26 Am Jur 2d, Elections, §§ 202-290.

§ 3-6-4. Voting Places and Hours; Notice

Voting places, with the approval of the Council, shall be provided by the Tribal Election Commission and shall be open during the hours of 6 a.m. to 7 p.m. on the day of the election. Proper notice of the election shall be given by the Tribal Election Commission.

§ 3-6-5. Manner of Voting Generally

(a) Voting shall be by secret ballot.

(b) Except as otherwise provided, any registered voter may vote by appearing at his prescribed voting place, announcing to the Election Board his name and address and by marking and placing in the ballot box the ballot which shall be handed to him.

(c) Any registered voter who will be unable to vote in person may vote by absentee ballot as prescribed in Article 3 of this chapter.

§ 3-6-6. Voting by Persons with Physical Disabilities or Language Barriers

If a voter presents himself and states that he or she, because of a physical disability or infirmity or language barrier, is unable to mark his ballot, assistance shall be provided by two members of the Election Board.

§ 3-6-7. Watchers

Candidates for the office of the Chairman, Vice Chairman, and each candidate for the Council may submit two names as their designated watchers at each polling place. No candidate for any elected office of the White Mountain Apache Tribe shall be a watcher. Watchers are restricted from conversing with voters and Election Board members. Any disruption by watchers will be cause for their removal from the polling place. Poll watchers are to remain only in designated areas.

SUBARTICLE 3

Absentee Voting

Cross References

§ 3-6-8. Absentee Voting; Request for Ballot.

(a) Any registered voter of the White Mountain Apache Tribe who expects to be absent from the district in which he or she is registered on any primary and general election day, or who expects to be physically unable to go to the voting place on such day, may request an absentee ballot either by coming in person to the office of the Tribal Council Secretary, or by sending a letter to the White Mountain Apache Tribal Election Commission. A person requesting an absentee ballot shall identify himself or herself using the name under which he/she registered and shall state the district in which he or she is registered.

(b) The applicant for an absentee ballot shall complete and sign the application before the Chairman or any member of the Tribal Election Commission or any Notary Public. The person before whom the applicant completes the application shall sign it with his or her name and official title, and if a notary public, shall impress his or her seal on the application. Persons unable to sign the application shall have the application signed by a witness. Applications for absentee voter ballots must be delivered either in person or by mail to the White Mountain Apache Tribal Election Commission.

(c) Requests for absentee ballots by mail shall be accepted until 7 days prior to the election of the election year. Registered voters may make their requests in person at the Tribal Election Commission's Office until 4:30 p.m. on the Tuesday preceding the election.

(d) All persons who previously received an absentee ballot by mail for the Primary election shall be provided an absentee ballot for the General election.

§ 3-6-9. Delivery or Mailing of Documents to Applicant.

Unless it is evident that the applicant is not a registered voter, the Tribal Election Commission shall immediately cause the following documents to be delivered or mailed to such applicant.

1. A ballot for the proposed absentee voter's district.
2. An affidavit envelope labelled "For Absentee Ballot Only" for the ballot to be put into after the voter has marked it.
3. An envelope with the address of the Tribal Election Commission printed on its front.
4. The official application.

§ 3-6-10. Form of Application.

(a) The form of application for the absentee ballot shall be as follows:

State of Arizona, County of Navajo, I, _____,
do solemnly swear or affirm that I am a registered voter of the
White Mountain Apache Tribe registered in District _____;
that I expect to be absent from my District on the day of the
next White Mountain Apache Tribal Election or because of physical
disability will not be able to go to the voting place on such
day. Therefore, I hereby make application to the Tribal Election
Commission for an absentee ballot.

Voters Name

Voter's Registration Number
(if known)

WITNESS:

SIGNED AND SWORN to before me this _____ day of _____,
19____.

Notary Public/Commission Member

(b) The Tribal Council Secretary shall supply printed instructions to absentee voters substantially as follows:

1. Sign both the affidavit envelope and the application before any Notary Public or other officer authorized by law to administer oaths.
2. Display ballot unmarked before the officer in his presence, but in such a manner that he cannot see your vote, mark your ballot, and seal it in the white envelope marked, "For

Absentee Ballot Only". Do not enclose the application with the ballot.

3. Sign the oath on the back of the white affidavit envelope marked, "For Absentee Ballot Only".

4. Place the application for ballot, complete with signature and acknowledgment, together with the white envelope containing your ballot, in the enclosed self address envelope. Check to see that the application is not enclosed in the envelope marked, "For Absentee Ballot Only", and mail. The ballot and application must be in the office of the Tribal Council Secretary or the Tribal Election Commission before 7:00 p.m. on Election Day.

§ 3-6-11. Ballot Affidavit; Form.

(a) The absentee ballot shall be accompanied by an envelope bearing upon the front a printed affidavit in substantially the following form:

State of Arizona, County of _____, I, _____, do solemnly swear that I am a registered voter of District _____, of the Fort Apache Indian Reservation. I further swear or affirm that I personally voted the enclosed ballot (or that it was marked according to my instructions because I was unable to do so).

Signature of Elector

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19____.

I further certify that the Affiant exhibited the enclosed ballot to me unmarked. Then, in my presence, the Affiant personally and privately marked such ballot in such a manner that neither I, nor any other person, was able to see the Affiant vote, or it was marked by me according to the Affiant's instructions and enclosed and sealed it in this envelope. The Affiant was not solicited or advised by any person to vote for or against any candidate or measure.

Title of Officer

§ 3-6-12. Receipt of Voter's Ballot.

Upon receipt of the envelope containing the absentee ballot and the completed application, the Tribal Election Commission shall compare the signatures thereon with the signatures of the elector on his affidavit of registration. If satisfied that the signatures correspond and that the application and the affidavit are sufficient, the Tribal Election Commission Officer shall hold

them unopened in accordance with the rules and regulations of the Election Commission.

§ 3-6-13. Casting Absentee Ballot.

(a) The Tribal Election Commission shall as provided by this section, cast separately for each District the absentee ballots which have been received. The Commission shall check the voter's application and his affidavit on the envelope containing the absentee ballot. If these are found to be sufficient, the Board shall check the voter's name on the precinct register. If the Commission then finds that the applicant is a duly registered voter of the district, the vote shall be allowed. If the application or the affidavit is insufficient, or if the applicant is not a registered voter of the district, the vote shall not be allowed.

(b) If the vote is allowed, the Commission shall open the envelope containing the ballot in such a manner that the affidavit thereon is not destroyed, take out the ballot without unfolding or permitting it to be opened or examined, endorse the stub in the same manner that the other ballots are endorsed, deposit the ballot and the envelope in which it was enclosed in the ballot box, and show by the records of the election that the voter has voted.

(c) If the vote is not allowed, the affidavit envelope containing the absentee ballot shall not be opened and the Commission shall mark across the face of such envelope the grounds for rejecting the ballot. The affidavit envelope with its contents shall then be deposited with the open affidavit envelopes and shall be preserved with official returns.

§ 3-6-14. Retention of Materials

All material used for procuring and casting an absentee ballot shall remain under the control of the Tribal Election Commission for a period of one (1) year after the day of the election.

SUBARTICLE 4

Count and Return of Votes; Recounts

Cross References

Research References

American Jurisprudence, 2d

26 Am Jur 2d, Elections, §§ 291-315

§ 3-6-15. Counting of Ballots; Certification of Results; Preparation of Consolidated Return of Election Results; Disposition of Ballots

(a) The ballots cast shall be counted and tallied by the Election Boards beginning at 7:00 p.m. or immediately after voting is completed on the day of the election.

(b) After counting, all ballots shall be placed in ballot boxes, locked, marked with the name and voting place and the date of the election by the Election Board. All unused and spoiled or rejected ballots shall also be labeled and placed in the ballot box.

(c) Results of the voting shall be made by certified return by the Election Board to the Election Commission and a copy of the return shall be posted at the voting place.

(d) The locked ballot boxes containing all ballots shall be immediately returned by the Judge and at least one other board official to the Election Commission.

(e) The Election Commission shall immediately prepare a consolidated return of the election results and post said results at the election headquarters.

(f) The Election Commission shall certify all elected candidates to the Tribal Council, provided a petition of contest has not been filed or a recount requested. All candidates not involved in a recount or protest will be certified. Certification of the candidate in question will be made following the determination of said protest or recount.

(g) The Election Commission shall store the ballots, upon approval of the Council, in such a manner that will insure the safekeeping of said ballots for a period of one year.

(h) On a day following the election a meeting shall be called by the Tribal Council for the purpose of certification of the election.

§ 3-6-16. Recounts

(a) Automatic Recount.

If the tally shows that the vote cast for the two candidates for an office with the highest vote is tied, or if the highest vote is larger than the next highest vote by less than 1% of the total vote cast for that office, there shall be an automatic recount.

(b) Only candidates for office may ask for a recount. A candidate requesting a recount shall petition the chairman of the Election Commission. A fee to cover costs of recount of \$100 per polling location will be charged the candidate requesting the recount. The time limit for filing for a recount shall be from the first calendar day following the certification of election results and shall continue for five (5) calendar days. Recounts will be completed by the Tribal Election Commission.

SUBARTICLE 5

Challenges to Elections Results

Cross References

Research References

American Jurisprudence, 2d

26 Am Jur 2d, Elections, § 316 et seq.

§ 3-6-17. Procedure for Election Contests Generally

In the event a candidate contests the correctness of the announced results of an election by alleging fraud or other irregularities, the chairman of the Election Commission shall set a hearing. Such contest of election must be made in writing to the Election Commission Chairman within five (5) calendar days following the certification of the election.

§ 3-6-18. Proceedings on Petitions Alleging Fraud

When a petition alleging fraud concerning voting is filed, said petition must be accompanied by a cash bond of five thousand dollars (\$5,000.00). The same amount must accompany a petition alleging fraud concerning absentee voting. Said petitions shall be conditioned upon payment of any and all liabilities or judgments arising from the contest so filed. In said petition, contestant must allege that fraud occurred in certain polling locations or in the casting of absentee ballots. He must further allege the name of the polling locations wherein such fraud occurred, the specific act constituting such alleged fraud and the names of the alleged perpetrators of such fraud. If such a petition is filed in the manner herein provided, the Chief Judge of the Tribal Court, or such other justice as the Chief Judge may assign, shall hear and determine said issue without delay or continuance of more than five (5) days. On the day of the hearing, the contestee may file an answer to such petition or may file a cross-petition, setting forth in detail, as required of a petitioner herein, such claim of fraud. The decision of said justice shall be final as to any changes in the total votes, and a copy of such judgment and decision shall be furnished to the Election Commission. In any case where fraud is proven on the

part of a candidate, he shall be declared ineligible for the office for which he was a candidate. In all cases where a petition is filed which alleges fraud, but after a hearing said allegations are not reasonably sustained by competent evidence, the contestant shall be civilly liable in damages to the contestee for all damages sustained, including a reasonable attorney fee and all reasonable and proper costs of conducting such contest.

§ 3-6-19. Proceedings on Petitions Alleging Irregularities Other than Fraud

(a) When a petition alleging irregularities other than fraud is filed, said petition must allege a sufficient number of irregularities and of such a nature as to:

(1) Prove that the contestant is lawfully entitled to be certified as a candidate, or to have his name appear on the runoff ballot; or

(2) Prove that it is impossible to determine with mathematical certainty which candidate is entitled to be certified as a candidate or to have his name appear on the runoff ballot.

(b) If sufficient allegations are not made, the petition shall be deemed frivolous by the presiding justice and shall be dismissed. Said petition when concerning poll voting shall be accompanied by a fee in the form of either a cashier's check or certified check in the amount of two hundred (\$200.00). The same amount must accompany a petition concerning absentee voting. Said petition must set forth specific allegations of irregularities in certain polling locations or in the casting of absentee ballots. If said petition is filed in the manner herein provided, the justice shall hear and determine said issue in the same manner as provided for a petition alleging fraud. Deposits shall be used to defray actual fees.

§ 3-6-20. Proceedings where Determination of Contest Impossible

If after a hearing is conducted, it is deemed impossible to determine who should be certified as the successful candidate, the judge shall notify the chairman of the Election Commission of same. It shall then be the duty of the Election Commission Chairman to notify the Tribal Council of said decision. The Council shall then order a new election as soon as is practical in the same manner as the contested election, with the identical candidates; provided that any candidate upon whom fraud has been proven shall not be a candidate in the new election;

ARTICLE 7

PENAL PROVISIONS

§ 3-7-1. Bribery of Electors.

It is unlawful to give or promise any money or other thing of value to any person for the purposes of influencing said person to vote or refrain from voting at any tribal election or to vote for any particular candidate at such elections; or to give, cause to be given, or promise to be given, any money or other thing of value to any person with the intent that any part of said money or thing of value shall be used for bribery in connection with any tribal election; or give or cause to be given or promise to be given, any money to any person as reimbursement for money or other things of value expended by such person in whole or in part for bribery at any tribal election; provided, however, that it shall not be unlawful for any candidate personally or by agent to provide transportation to the polls to any voter.

§ 3-7-2. Coercion of Electors.

It is unlawful to make use of force, or request another person to use force or threaten, in order to influence any person's vote in any tribal election, or to prevent any person from voting in any tribal election.

§ 3-7-3. Intimidation of Tribal Employees by Employer.

(a) It is unlawful for any employer to threaten a tribal employee with dismissal from employment, reduction of pay, loss of seniority, transfer, or less favorable working conditions, for the purpose of influencing such employee to vote or to refrain from voting, or to vote for any particular person, in any tribal election.

(b) It is unlawful for any employer to attempt by any means whatsoever in his place of business to influence the vote of any tribal member employee in any tribal election.

(c) It is unlawful for any employer to attempt to prohibit, limit or restrict the political activities of any tribal member employee beyond the employer's personnel policies.

As used in this section, the term "employer", means any natural person, association of natural persons, tribal enterprise, independent contractor, corporation, or other entity employing one or more tribal members of the White Mountain Apache Tribe or engaging their services under contract in any person acting as an agent for such person, association of persons, a tribal enterprise, a corporation, or other entity.

§ 3-7-4. Interference with or Corruption of Elected Officer.

It is unlawful for any person to offer or give a bribe to any member of the Election Commission of the White Mountain Apache Tribe or to any registrar appointed by the Election Commission or any member of the Election Board; or the influence or the attempt to influence any of said officers in the performance of their official duties by means of force or threats or promises of any nature.

§ 3-7-5. Violation of Duties by Election Officers.

It is unlawful for any member of the Election Commission, any registrar appointed by the Election Commission, or any member of the Election Board, to knowingly and willfully fail or neglect to perform any duty under any part of this chapter in the manner prescribed by this chapter or to accept any money or other thing of value from any candidate or from anyone acting or purporting to act on behalf of any candidate.

§ 3-7-6. Legal Registration of Voting.

It is unlawful for any person knowing he does not possess the qualifications for eligibility to vote in tribal elections, to register or attempt to register to vote in tribal elections, or to vote in such election; or for any person who is not registered as a voter of the White Mountain Apache Tribe to vote or attempt to vote in any tribal elections; or for any person to vote more than once in any tribal elections; or for any registered voter to vote in any district except the one he is registered as belonging too.

§ 3-7-7. Penalties.

Any member of the White Mountain Apache Tribe who shall violate any section of this Article shall be guilty of an offense against the White Mountain Apache Tribe and upon conviction thereof shall be sentenced to jail for not more than six months or to a fine of not more than \$1,200 or to both. Any person not a member of the White Mountain Apache Tribe who shall violate any section of this Article may be fined and/or expelled from tribal land by the Tribal Council in accordance with the procedures set forth in Tribal Ordinance No. 129.

Any association, a corporation, or other entity which shall violate any section or subsection shall be ordered to show cause to the Tribal Court why it should not be barred from receiving any lease, right of way, contract, franchise, or concession of any character whatsoever thereafter from the White Mountain Apache Tribe.