

Pawnee Nation of Oklahoma

Attorney General

Act



Approved by Pawnee Business Council Resolution 21-00 on August 24, 2021

A LEGISLATIVE ACT RELATING TO DUTIES OF THE ATTORNEY GENERAL

BE IT ENACTED BY THE PAWNEE NATION BUSINESS COUNCIL:

Section 1. Title and Codification.

This act shall be known as the Attorney General Act and shall be codified as Title ____, Sections 101 et seq. of the Pawnee Nation Code.

Section 2. Legislative History.

Section 3. Repeal.

Section 4. Title 51, Pawnee Nation Code § 101 shall read as follows:

Purpose.

The purpose of this Act is to assign to the Pawnee Nation's Attorney General those duties as the Pawnee Business Council may prescribe by law as provided for in Article IV, Section 2 of the Pawnee Nation Constitution and Law and Order Code (1993), Title I Tribal Courts, Section 614 (b). The Council recognizes the duties and powers delegated to the Attorney General by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Attorney General by said Constitution.

Section 5. Title 51, Pawnee Nation Code § 102 shall read as follows:

Definitions.

For purposes of this Act:

- A. "Administration" shall mean the executive function of the Pawnee Nation as provided for in Article IV of the Pawnee Nation Constitution.
- B. "Agency" shall mean commissions, departments, Government-owned companies, or other instrumentalities of the Pawnee Nation.
- C. "Council" or "Tribal Council" shall mean the Pawnee Nation Business Council as provided for in Article IV, Section 2 of the Pawnee Nation Constitution.
- D. "Government-owned company" or "Instrumentalities" means those entities in which the Pawnee Nation is the sole or majority stockholder or owner, including, but not limited to: the Pawnee Nation Tribal Development Corporation, etc.
- E. "Nation" shall mean the Pawnee Nation of Oklahoma.

F. "Person" means an agency, individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial, government-owned company, or governmental entity.

G. "State" means a state, territory, or possession of the United States, a federally recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

Section 6. Title 51, Pawnee Nation Code § 103 shall read as follows:

A. The Office of Attorney General is established with the powers and duties as provided herein.

B. The Attorney General shall be nominated by the President and approved by the Pawnee Business Council for a term of four years.

C. The Attorney General may be removed from office by two-thirds vote of the Pawnee Business Council for cause.

D. The Attorney General represents the Nation as a whole and does not represent solely any person, branch, department, or agency.

E. The Attorney General is responsible for formulating the overall legal strategy and policies of the Nation subject to concurrence by the Pawnee Business Council.

Section 7. Title 51, Pawnee Nation Code § 104 shall read as follows:

Functions and Duties of the Attorney General.

A. The Attorney General shall represent the Nation in all criminal, child welfare, and delinquent child cases in the courts of the Nation, and in all civil actions wherein the Nation is named as a party, and shall have such other duties as the Council may prescribe by law.

B. In addition to the duties prescribed by the Constitution, the duties of the Attorney General as the chief legal officer of the Nation shall be:

1. To supervise the Nation's representation in all litigation in which the Nation, an agency, or officer thereof is interested, and shall direct all special attorneys appointed pursuant to this title and all contract attorneys in the discharge of their respective duties; the conduct of litigation in which the Nation, an agency, department or officer thereof is a party, or is interested, is reserved to the Attorney General, provided that the Attorney General may waive this requirement for specific legal issues which do not implicate governmental interests;

2. To initiate or appear, at his/her discretion, in any action in which the interests of the Nation or the Members of the Nation are at issue, and prosecute and defend in any court or before any

commission, board or officers or other adjudicatory body, administrative tribunal or body of any nature, in all civil or criminal legal or quasi-legal matters, any cause or proceeding, in which the Nation may be interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the Nation, take and assume control of the prosecution or defense of the Nation's interests therein, provided that this section includes the authority to initiate or appear in any action involving a Nation-owned company;

3. To prosecute all actions necessary under the Pawnee Nation Law and Order Code for the protection and welfare of children and juveniles in the Pawnee Nation courts, and to intervene, at the discretion of the Attorney General, in any action in any state court wherein intervention is permitted pursuant to the federal Indian Child Welfare Act, 25 U.S.C.A. §§ 1901 et seq.;

4. To give an official opinion upon all questions of law submitted to the Attorney General by any member of the Council, President or Vice-President or equivalent of any Pawnee Nation board, commission, or executive branch department, and only upon matters in which the requesting party is officially interested;

5. To prepare drafts of regulations, and of contracts and other instruments in which the Pawnee Nation Government is interested and to render opinions on the legal sufficiency of all contracts and other instruments in which the Pawnee Nation is interested and the best interests of the people of the Pawnee Nation are served;

6. To prepare legislation and resolutions as the Attorney General deems appropriate and to provide review of all legislation in whatever form in order to provide a written opinion thereon as to the possibility of conflicts with other laws and the Constitutionality of said bills;

7. To enforce the proper application of monies appropriated by the Council and to prosecute breaches of trust in the administration of such funds;

8. To institute actions to recover Nation monies illegally expended, to recover Nation property;

9. To keep and file copies of all opinions of the Office of Attorney General, and to keep an index of all such opinions according to subject and section of the law construed or applied and to cause to be published such of his/her opinions as he/she considers valuable for preservation and to prescribe the manner for the publication of the opinions;

10. To keep a register or docket of all actions, demands and investigations prosecuted, defended, or conducted by the Attorney General on behalf of the Nation. Said register or docket shall give the style of the case or investigation, where pending, court number if any, the substance of the matter, result and the names of the assistant(s) who handled the matter;

11. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the Nation;

12. To furnish legal advice to Nation officials and all executive departments, boards, commissions, agencies, instrumentalities and officers of the Pawnee Nation concerning any matter arising in connection with the exercise of their official powers and duties, and to supervise and direct the legal business of every executive department, board, commission, agency, instrumentality and officer of the Pawnee Nation, provided that this section does not include advice and representation to such officials in their individual capacity, nor does it include advice to tribal citizens who are not officials of the Nation.

13. To investigate any report by the Treasurer or the Office of Audit and Compliance filed with the Attorney General and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of the Nation;

14. To investigate and prosecute all actions, civil or criminal, relating to civil actions or crimes against or within the jurisdiction of the Pawnee Nation, provided that any such criminal actions shall be investigated in coordination with the Marshal Service, and when deemed appropriate by the Attorney General, with any federal or local law enforcement agency and to convene grand juries in such manner and for such purposes as provided by law, provided that such grand juries shall be composed of citizens of the Pawnee Nation;

15. To settle any case or controversy on behalf of the Nation, except that a settlement involving injunctive relief which substantially impacts the operation or programs of a Nation agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the President and the Council. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement;

16. To oversee all Nation activities related to child-support enforcement as designated by law;

17. Coordinate with the Pawnee Nation Police the following duties:

- a) bailiff duties;
- b) transportation of prisoners;
- c) protection of the Courthouse and the court staff;
- d) protection of witnesses, parties and prosecutors;
- e) service of process;
- f) and to obey the lawful orders and directions of the courts.

18. To direct and supervise all activities of the Attorney General's Office;

19. To prepare the budget for the Attorney General's Office;

20. To promulgate such rules, regulations, policies, and procedures as the Attorney General deems necessary to fulfill the duties of the Office;

21. To promulgate rules, regulations, policies, and procedures for the qualifications and conduct of employees of the Attorney General's Office, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are more stringent than those of the Pawnee Nation Human Resources Policies and Procedures;
22. To designate an individual to act as Attorney General, with the approval of the Pawnee Business Council, in the absence of the Attorney General so long as said designation does not exceed six (6) months;
23. To engage in other activities as may be prescribed in other sections of the Pawnee Nation Code.; and
24. To hire or approve the hiring of Prosecutors or other attorneys to represent the Nation in criminal, child welfare, and delinquent child cases and for agencies and commissions.

Section 8. Title 51, Pawnee Nation Code § 105 shall read as follows:

Costs of litigation.

- A. Except as otherwise provided by law or written agreement, the cost of litigation in any case for which representation is provided pursuant to this Act shall be paid out of the Attorney General's budget.
- B. Costs of litigation shall include, but is not limited to, court fees and costs, deposition expenses, travel and lodging, witness fees and other similar costs; except that this act shall not be construed as authorizing the payment by the Nation or any agency thereof of any judgment making an award of monetary damages.

Section 9. Title 51, Pawnee Nation Code § 106 shall read as follows:

Appearance not waiver of immunity of the Nation.

The appearance of the Attorney General or his/her designee(s) in any matter, proceeding or action in any court, before any commission, board or officer or other adjudicatory body, shall not be construed to waive the sovereign immunity of the Nation.

Section 10. Title 51, Pawnee Nation Code § 107 shall read as follows:

Prosecutors and other assistants to the Attorney General; delegation of authority.

- A. The Attorney General is empowered to designate such prosecutors and other assistants as deemed necessary to carry out the duties of office. The Attorney General may from time to time make such provisions as he/she considers appropriate authorizing the performance of any

function of the Attorney General by any other officer or employee of the Office of Attorney General.

B. Investigators designated by the Attorney General shall be certified by an accredited police academy and will be deputized by the Marshal.

C. The Attorney General shall appoint and fix the duties of all prosecutors, assistants, and other employees of the Office of Attorney General as the Attorney General deems necessary to perform the duties imposed upon the Attorney General. The compensation of the Attorney General shall not be decreased during his/her term of office.

D. The Attorney General is further authorized to appoint special assistants or special attorneys, including those from external law firms and entities, with the approval of the Pawnee Business Council, to fulfill the functions of the Attorney General where deemed necessary and appropriate to secure the best interests of the Nation.

E. The Attorney General may hire, designate, and delegate duties to Prosecutors for actions adjudicated in tribal court.

Section 11. Title 51, Pawnee Nation Code § 108 shall read as follows:

Interests of Pawnee Nation in pending suits.

Any attorney, officer, or employee of the Office of Attorney General may be sent by the Attorney General to any Tribe, State or district in the United States to attend to the interests of the Pawnee Nation in a suit pending in a court of the United States, a Tribe or State, or to attend to any other interest of the Pawnee Nation.

Section 12. Title 51, Pawnee Nation Code § 109 shall read as follows:

Disqualification of officers and employees of the Office of Attorney General.

The Attorney General shall promulgate rules and regulations which require the disqualification of any attorney, officer, or employee of the Office of Attorney General, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

Section 13. Title 51, Pawnee Nation Code § 110 shall read as follows:

Vacancy in position of Attorney General.

In case of a vacancy in the position of Attorney General by reason of removal, death, resignation or disability lasting for more than six (6) months, the Attorney General position shall be filled by

appointment by the President with confirmation by the Council with the replacement to fill out the remainder of the original term.

Section 14. Title 51, Pawnee Nation Code § 111 shall read as follows:

Employment of attorneys, authority of boards or officials; defense of actions by Attorney General.

Except as otherwise provided by this Act, no Nation officer, agency, board or commission shall have authority to employ or appoint attorneys to advise or represent said officer, agency, board or commission in any matter without prior written approval of the Attorney General. Nothing herein shall prevent the Council or the President, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney counsel on matters within the purview of their respective powers and authorities.

Section 15. Title 51, Pawnee Nation Code § 112 shall read as follows:

Legal representation of agency or official of Executive Branch; contracts.

A. An agency or official of the Executive Branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney if authorized by the Attorney General;
2. Seeking representation by the Office of Attorney General; or
3. If the Office of Attorney General is unable to represent the agency or official due to a conflict of interest, or the Office of Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section.

B. When entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall select an attorney or attorneys and gain approval of said attorney or attorneys from the Attorney General. The Attorney General must approve a schedule of fees for services. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

C. Before entering into a contract for legal representation, regardless of cost, by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction(s) requiring representation;

2. The reason or reasons for not obtaining the representation from the Office of Attorney General;
 3. The anticipated cost of the representation including the following:
 - a. the basis for or method of calculation of the fee, including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and
 - b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract, and
 - c. an estimate of the anticipated duration of the contract.
- D. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall obtain the approval of the Attorney General. Any amendment, modification, or extension of a contract covered by this section shall also require approval by the Attorney General.
- E. When an agency or official of the Executive Branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with all other applicable procurement and finance regulations and procedures. All costs of contract legal representation, including costs of litigation occurring pursuant to the contract, shall be borne by the agency entering the contract.
- F. Nothing herein shall prevent the Council or the President, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

Section 16. Title 51, Pawnee Nation Code § 113 shall read as follows:

Nation officer or employee; legal defense services; defense duties; evidence.

- A. The Attorney General shall defend any employee, elected or appointed Nation officer or employee of any Nation office, institution, agency, board or commission of any branch of Nation government in any civil action or special proceeding in the courts of the Nation, a State, or of the United States, by reason of any alleged act done or omitted in the scope of the employee's authority and in the course of his/her employment. The employee named in the action may employ private counsel at his own expense to assist in his defense, however, such employment of private counsel shall not preclude the Attorney General from intervening in the action on the Nation's behalf. Failure of an employee to request representation shall not prohibit the Attorney General from intervening to protect the Nation's interests in any cause of action.
- B. The Attorney General shall not represent a Nation employee if that employee acted outside the scope of his/her authority.

C. The Attorney General may intervene in any such action or proceeding and appear on behalf of the Nation, or any of its officers or employees, where the Attorney General deems the Nation to have an interest in the subject matter of the litigation. However, in cases in the Nation's courts where one branch of the Nation's government is an opposing party in a suit brought by another branch of the Nation's government, the Attorney General shall not represent either party but may intervene to provide an opinion concerning the Nation's interests in the matter.

D. 1. When an original action seeking either a writ of mandamus or prohibition against a district judge, associate district judge, or special judge of the district court is commenced or when a cause of action challenging the authority of any Nation court is commenced in state or federal court, the Attorney General shall represent such judicial officer(s) if, and only if, directed to do so, in writing, by the Chief Justice of the Pawnee Nation Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

2. In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated by the Court for services rendered.

Section 17. Conflict of Interest and Disclosure

The Attorney General shall disclose and have a continuing obligation to disclose to the PBC any tribal, ethical, legal, financial, family, or potential conflict.

Section 18. Confidentiality

The Attorney General shall maintain the strictest confidentiality over Tribal matters.

Section 19. Provisions not cumulative.

The provisions of this act shall not be cumulative to existing law and the provisions of this act shall supersede any existing law in conflict herewith.

Section 20. Severability.

The provisions of this act are severable. If any part or provision hereof shall be held invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining parts or provisions of this act.

Section 21. Emergency declared.

It being immediately necessary for the welfare of the Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 22. Title 51, Pawnee Nation Code § ____ shall read as follows:

Attorney General; minimum qualifications.

To be eligible for the Office of Attorney General of the Pawnee Nation of Oklahoma, a person shall meet the following minimum qualifications:

- (a) A graduate of any accredited law school in the United States;
- (b) Admission to practice before the courts of the Pawnee Nation of Oklahoma;
- (c) A member of good standing of any State bar and the Pawnee Nation Bar Association;
- (d) Extensive knowledge, experience, and expertise of Federal Indian Law, Tribal-State relations, and Tribal-Federal relations;
- (e) Extensive knowledge, experience, and expertise in matters involving litigation and cases concerning Criminal Law, Civil Law, Federal Civil Rights, Juvenile Justice, and Indian Law;
- (f) No conviction of any felonies; and
- (g) Shall not be an incumbent judge of the Pawnee Nation court system.