



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION LEGISLATURE ACKNOWLEDGEMENT OF GENERAL COUNCIL RESOLUTION 9/28/13-12 AND LEGISLATIVE ACTION REGARDING THE DEFINITION OF MALFEASANCE

RESOLUTION 11-05-13K

- WHEREAS,** on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all governmental personnel; and
- WHEREAS,** Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its Legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and
- WHEREAS,** the Nation's General Council met on September 28, 2013 at its Annual Meeting and adopted Resolution 9/28/13-12 entitled "Binding Policy that Defines Malfeasance and Mandates that the HCN Constitution be Absolutely Adhered."; and
- WHEREAS,** General Council Resolution 9/28/13-12 addresses, as General Council policy, the definition of Malfeasance under the Nation's Constitution for removal proceedings and attempts to set a standard for malfeasance; and
- WHEREAS,** Article IX of the Constitution contains provisions allowing the General Council to remove Legislators and the President for malfeasance, but that term is not defined within the Constitution; and
- WHEREAS,** through various tribal court challenges, the Nation's Supreme Court has addressed the meaning of "malfeasance"; and

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WHEREAS, Article IV, Section 3(a) of the Constitution states that “[t]he General Council retains the power to set policy for the Nation. This policy shall be resolutions proposed and approved at Annual Meetings and Special Meetings, by a majority vote of the qualified voters of the Ho-Chunk Nation General Council. This policy shall be made into laws, including codes, ordinances, resolutions and statutes by the Legislative Branch of the Ho—hunk Nation within forty-five (45) days after a majority vote of the qualified voters of the Ho-Chunk Nation General Council at Annual Meetings and Special Meetings.”; and

WHEREAS, the attorney for the General Council agency issued an opinion dated October 5, 2013 on all resolutions adopted by the General Council on September 28, 2013, including Resolution 9/28/13-12; and

WHEREAS, in the opinion of the General Council agency, General Council Resolution 9/28/13-12 may be contrary to the HCN Supreme Court decision in George Lewis v. HCN Election Board, Case No. SU 06-07 (March 12, 2007) and, further, that this resolution will need additional clarification regarding its scope and application to General Council removal proceedings; and

WHEREAS, the Legislature finds that it may impermissibly intrude into the authority of the Judiciary or the General Council if it attempted to define the meaning of “malfeasance,” and instead defers to further discussion and action on this item by the Judiciary and the General Council.

NOW, THEREFORE, BE IT RESOLVED, that the Legislature, pursuant to its Constitutional authority, and in satisfaction of Article IV, Section 3(a) of the Constitution, hereby takes no action on General Council Resolution 9/28/13-12 in light of the above concerns.

CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certifies that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **9** constituting a quorum were present at a meeting duly called and convened and held that on the **5th day of November, 2013**, that the foregoing resolution was adopted at said meeting by an affirmative vote of **8 members, 0 opposed, and 1 abstaining**, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.

Kathleen Lone Tree-Whiterabbit
Kathleen Lone Tree-Whiterabbit, Tribal Secretary

11.5.13
Date