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**REVISED CONSTITUTION  
MESCALERO APACHE TRIBE  
MESCALERO RESERVATION  
NEW MEXICO**

**APPROVED MARCH 25, 1936**

**REVISED JANUARY 12, 1965**

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**As Amended**

**Through May 31, 1985**



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

REVISED  
CONSTITUTION OF THE APACHE TRIBE  
of the  
MESCALERO INDIAN RESERVATION  
NEW MEXICO

APPROVED MARCH 25, 1936  
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**REVISED  
CONSTITUTION OF THE APACHE TRIBE  
of the  
MESCALERO RESERVATION**

**PREAMBLE**

We, the members of the Apache Tribe of the Mescalero Reservation, in order to promote justice, insure tranquility, encourage the general welfare, foster the social and economic advancement of our people, safeguard our interests, bring our representative tribal government into closer alignment with State and National governments, and secure for ourselves and for our posterity the blessings of freedom and liberty, do hereby establish this revised constitution as the foundation upon which our tribal government shall rest.

**ARTICLE I - THE MESCALERO APACHE TRIBE**

SECTION 1. The Apache Tribe of the Mescalero Reservation, hereinafter referred to as the Mescalero Apache Tribe, shall include all persons recognized as members thereof, or upon whom membership may be conferred, pursuant to the provisions and restrictions imposed by Article IV of this constitution, irrespective of the Apache Band with which they may be identified.

**ARTICLE II - TERRITORY**

SECTION 1. The jurisdiction of the Mescalero Apache Tribe, its tribal council and courts shall extend to all the territory within the exterior boundaries of the reservation, and to such other lands as may be added thereto by purchase, gift, Act of Congress, or otherwise.

**ARTICLE III - RESERVATION**

SECTION 1. Title to reservation lands shall remain tribal property and shall not, in whole or in part, be granted by allotment or otherwise to tribal members or groups of members as private property. The control of reservation lands, and of assignments or leases thereof, and of other tribal property, shall be in the tribal council, subject to applicable Federal authority, and regulated by

ordinances not inconsistent with or contrary to this constitution.

SECTION 2. The tribal council shall have power to assign unused tribal lands, or to reassign any unused assignments, or portions thereof, which have been idle for two (2) or more years. No reassignment of a homestead may be made so long as the original assignee shall reside on the homesite, unless he shall voluntarily release the homesite to the tribe. A member may transfer his homesite to one of his children. The tribal council shall decide by ordinance what shall constitute a unit for purposes of assignment of land for private use, and shall determine the rules governing the use and transfer of such assignments.

SECTION 3. A non-member who is the surviving spouse of a member of the tribe shall have the privilege to use an assignment for the benefit of enrolled minor children, but a non-member shall not acquire any vested interest or rights in any tribal property, except as otherwise provided by ordinance of the tribal council, or by applicable Federal law.

#### ARTICLE IV - MEMBERSHIP

SECTION 1. *The membership of the Mescalero Apache Tribe shall consist of the following persons:*

*(a) Any person whose name appeared on the Census Roll of the Mescalero Apache Agency of January 1, 1936.*

*(b) All persons born to resident members after the census of January 1, 1936, and prior to the effective date of this constitution.*

*(c) Any child born to a non-resident member, prior to the effective date of this constitution, provided that such child shall have resided on the Mescalero Reservation for not less than one (1) year immediately preceding the date of enrollment.*

*(d) Any person of one-fourth degree or more Mescalero Apache blood, born after the effective date of this constitution, either one or both of whose parents is (are) enrolled in the membership of the Mescalero Apache Tribe. [Section 1 as amended February 3, 1981]*

SECTION 2. No person, being enrolled or recognized as a member of another tribe, shall be eligible for enrollment in the Mescalero Apache Tribe.

SECTION 3. The tribal council shall have the power to adopt ordinances, consistent with this constitution, governing future membership, loss of membership, and the adoption of members into the Mescalero Apache Tribe, which ordinances shall be subject to review by the Secretary of Interior.

SECTION 4. The tribal council shall have the power to prescribe rules to govern the compilation and maintenance of a membership roll, and to make corrections in the basic roll, subject to the approval of the Secretary of the Interior.

SECTION 5. The constitution of the Mescalero Apache Tribe, and ordinances enacted pursuant thereto, shall govern tribal membership and enrollment. No decree of any non-tribal court purporting to determine membership in the tribe, determine paternity, or determine the degree of Indian blood, shall be recognized for membership purposes. The tribal council shall have sole authority and original jurisdiction to determine eligibility for enrollment, except where the membership of an individual is dependent upon an issue of paternity, in which case the trial court, or the tribal council sitting as an appellate court, shall have authority and exclusive jurisdiction.

## ARTICLE V - BILL OF RIGHTS

SECTION 1. Subject to the limitations prescribed by this constitution, all members of the Mescalero Apache Tribe shall have equal political rights and equal opportunities to participate in the economic resources and tribal assets, and no member shall be denied freedom of conscience, speech, religion, association or assembly, nor shall he be denied the right to petition the tribal council for the redress of grievances against the tribe.

## ARTICLE VI - DISQUALIFICATION OF TRIBAL MEMBERS FOR ELECTIVE OFFICE

SECTION 1. No person who has been convicted of any felony or other serious offense, including adultery, bribery, embezzlement, extortion, fraud, forgery, misbranding, perjury, theft, habitual drunkenness, or felonious assault or felonious battery, shall be eligible for

candidacy to any elective office of the Mescalero Apache Tribe unless he shall have been pardoned by the President of the Mescalero Apache Tribe in conformity with applicable ordinances and procedures prescribed by the tribal council.

ARTICLE VII - ORGANIZATION OF THE  
GOVERNMENT  
OF THE MESCALERO APACHE TRIBE

SECTION 1. The powers of the government of the Mescalero Apache Tribe are divided into three distinct departments, the Legislative, the Executive and the Judicial, and no person or group of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as this constitution may otherwise expressly direct or permit.

ARTICLE VIII - PART I - THE LEGISLATIVE  
DEPARTMENT:  
COMPOSITION AND QUALIFICATIONS

SECTION 1. The legislative powers of the Mescalero Apache Tribe shall rest in the Mescalero Apache Tribal Council, hereinafter referred to as the tribal council, which shall hold its sessions at the seat of the tribal government.

SECTION 2. The tribal council shall consist of eight (8) members, elected at large from the membership of the Mescalero Apache Tribe.

SECTION 3. The members of the tribal council shall be at least twenty-five (25) years of age at the time of election or appointment (Article X, Section 4); shall have one-quarter or more Mescalero Apache Indian blood; shall have resided on the Mescalero Apache Reservation for a period of at least six (6) months immediately prior to the election, and shall be subject to the restrictions set out in Article VI.

SECTION 4. No person shall serve as a member of the Mescalero Apache Tribal Council while holding any other elective office, or policy making position with the tribe or with any organization doing business on the Mescalero Reservation.

## ARTICLE IX - NOMINATIONS AND ELECTIONS

SECTION 1. An election board, appointed by the president of the Mescalero Apache Tribe, shall supervise and administer all elections in accordance with established tribal ordinances, and in conformity with this constitution; provided that no member of the election board shall be at the same time a member of the tribal council or a candidate for tribal office, and provided further that persons so appointed by the president shall be confirmed by the tribal council.

SECTION 2. Any member of the Mescalero Apache Tribe shall have the right to vote in any tribal election provided such member:

(a) *Is at least eighteen (18) years of age at the time of such election. [As amended December 16, 1977]*

(b) *Has resided within a fifty (50) mile radius of the Tribal Administration Office, which office is located on the reservation for a period of at least six (6) months immediately prior to the day of election. [Deleted December 16, 1977; added as amendment December 17, 1982]*

SECTION 3. Members of the tribal council, and all other elective officials of the Mescalero Apache Tribe, shall be chosen by secret ballot, the form of which shall be established by ordinance enacted by the tribal council.

SECTION 4. The tribal council, by ordinance, shall make provision for absentee voting, including the use of a secret ballot for this purpose.

SECTION 5. No member of the Mescalero Apache Tribe shall be deprived of his right to vote, if otherwise qualified, because of temporary absence from the reservation. Temporary absence shall be defined, for purposes of this selection, as follows:

(a) Absence for the purpose of attending an educational institution for purposes of obtaining formal training, or

(b) Absence for purposes of receiving treatment at a regular hospital, clinic or sanitarium, or

(c) Absence for purposes of service in the Armed Forces of the United States, or

(d) Absence for purposes of obtaining additional educational training in regularly held training sessions, or

(e) Absence for any other reason which does not exceed six (6) months' duration,

immediately preceding a tribal election, without return to the physical limits of the reservation.

SECTION 6. Any qualified member of the Mescalero Apache Tribe who desires that his (her) name be placed on the ballot as a candidate for the office of president, vice-president or council member in the primary election shall file with the tribal secretary a statement of intention showing his (her) name and the office for which he (she) desires to become a candidate. Such statement shall be filed not less than fifteen (15) days preceding the primary election.

SECTION 7.

(a) *A primary election to select candidates for the office of the president, vice-president and council members shall be held at least thirty (30) days before the general election of the Tribe. The two nominees receiving the highest number of votes for president shall be the only candidates for the office of president at the next general election. The two nominees receiving the highest number of votes for vice-president shall be the only candidates for vice-president in the next general election. The eight nominees receiving the highest number of votes, for council member shall be the only candidates for council members in the next general election.*

(b) *If the number of candidates filing for president, vice-president or a position on the council is such that a primary election would not serve to eliminate any candidates for a given position then such candidates shall be the candidates in the general election.*

(c) *A Primary election shall be held for an office or position only when there are more candidates than are allowed in the general election, and the ballots shall be limited to the offices or positions where an elimination of candidates must take place. [Section 7 as amended December 17, 1982]*

SECTION 8. *General Elections to vote for Tribal Council Members and all elected officers of the Mescalero Apache Tribe shall be held annually on the first Tuesday in November. Notice of both the primary and general elections shall be posted at least thirty (30) days before each such election at the voting place and in three (3) or more additional*



*public places. Such notice shall be posted by the Secretary of the Tribal Council. [As amended December 17, 1982]*

SECTION 9. No candidate shall be permitted to withdraw except by filing a written notice thereof with the tribal secretary at least twelve (12) days before the primary and the general election. The tribal secretary shall post the names of all candidates at the voting place, and at three or more additional public places at least ten (10) days before the primary and general election.

SECTION 10. The first election of tribal council members and officers under this constitution shall be held on the first general election date following its adoption and ratification. The candidate with the highest number of votes for the office of president shall hold the office for two (2) years. The candidate with the highest number of votes for the office of vice-president shall hold that office for two (2) years. The four candidates receiving the highest number of votes for council member-at-large shall hold office for two (2) years. The four candidates receiving the next highest number of votes for council member-at-large shall hold office for one (1) year. Tie votes shall be decided by lot. The term of office for these newly elected council members shall start on the second Friday of the month of January following the election, at which time the incumbent business committee will be dissolved.

SECTION 11. Succeeding members of the Mescalero Apache Tribal Council shall be elected to serve for a term of two (2) years, with one-half of the members-at-large thereof elected each year. The term of office of newly elected members shall start on the second Friday of the month of January following the election.

SECTION 12. The candidate receiving the highest number of votes at the general election for the office of president shall become the president. The candidate receiving the highest number of votes at the general election for the office of vice-president shall become the vice-president.

SECTION 13. The four candidates for the office of councilman-at-large receiving the highest number of votes cast in each general election, and the winning candidates for the office of president and vice-president, shall be certified to the tribal council by the election board as the duly elected councilmen and officers of the tribe.

SECTION 14. No person shall be a candidate for more than one office in any primary election.

SECTION 15. Any tie vote shall be decided by lot before the tribal council.

## ARTICLE X - VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. Any member of the tribal council or elected officer of the Mescalero Apache Tribe who, during the term for which he is elected, is convicted of any felony, shall automatically forfeit his office. Any member of the tribal council or elected officer found guilty of a misdemeanor involving moral turpitude, gross neglect of duty, malfeasance in office or misconduct reflecting on the dignity and integrity of the tribal government, may be removed from office by majority vote of the tribal council. Before any vote for removal from office is taken, such member or officer shall be given a written statement of the charges against him at least five (5) days before the meeting of the tribal council before which he is to appear, and he shall be given an opportunity to answer any and all charges at the designated council meeting. The decision of the tribal council shall be final.

SECTION 2. Upon receipt of a petition signed by at least twenty-five percent (25%) of the eligible voters demanding recall of any member of the tribal council, or elected officer, filed with the secretary of the tribal council at least four (4) months before the expiration of such council member's, or official's, term of office, it shall be the duty of the tribal council to call a special election upon the question of recall. Such election shall be held not less than twenty-five (25) nor more than forty (40) days from the filing of the petition. No council member or elected officer may be recalled unless a majority of the members voting vote in favor of the recall, and unless at least thirty percent (30%) of the eligible voters vote in the election.

SECTION 3. If a member of the tribal council fails to attend two (2) successive meetings of the tribal council or a committee thereof, of which he is a member, or any combination of tribal council or such committee meetings, he shall automatically cease to be a member of the tribal council. In such event, the tribal council shall declare the position vacant and the president shall, subject to confirmation by the tribal council, appoint a successor to serve the unexpired term, unless such member

- (a) Is excused by the tribal council, or

(b) Is absent by reason of illness, or due to reasons beyond his control, which are satisfactory to the tribal council.

SECTION 4. In the event of a vacancy, for any cause, in the membership of the tribal council, the unexpired term corresponding to the vacancy shall be filled by a qualified person, appointed by the president and confirmed by the tribal council.

## ARTICLE XI - POWERS OF THE TRIBAL COUNCIL

SECTION 1. The Mescalero Apache Tribal Council shall have the following duties and powers subject to all applicable laws of the United States, this constitution, and the regulations of the Secretary of the Interior.

(a) To veto the sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets, that may be authorized by any agency of government without the consent of the tribe; and any encumbrance sale, grant, or lease of any portion of the reservation, or the grant of any rights to use of lands or other assets, or the grant of relinquishment of any water or mineral rights or other natural or fiscal assets of the Mescalero Reservation, are hereby reserved to the sanction of the tribal council.

(b) To encumber, lease, permit, sell, assign, manage or provide for the management of tribal lands, interests in such lands or other tribal assets; to purchase or otherwise acquire lands or interests in lands within or without the reservation; and to regulate the use and disposition of tribal property of all kinds.

(c) To protect and preserve the property, wildlife and natural resources of the tribe, and to regulate the conduct of trade and the use and disposition of tribal property upon the reservation, provided that any ordinance directly affecting non-members of the tribe shall be subject to review by the Secretary of Interior.

(d) To adopt and approve plans of operation to govern the conduct of any business or industry that will further the economic well-being of the members of the tribe, and to

undertake any activity of any nature whatsoever, not inconsistent with Federal law or with this constitution, designed for the social or economic improvement of the Mescalero Apache people, such plans of operation and activities to be subject to review by the Secretary of the Interior.

(e) To use tribal funds as loans or grants, and to transfer tribal property and other assets, to tribal corporations, associations, commissions or boards for such use as the tribal council may determine in conformity with this constitution and consistent with applicable Federal laws and regulations.

(f) To authorize the president to negotiate contracts, leases and agreements of every description not inconsistent with Federal law or with this constitution, subject to review or approval by the Secretary of the Interior where such review or approval is required by statute or regulations; Provided, that all contracts, leases and agreements so negotiated shall be subject to approval by the tribal council.

(g) To acquire, by condemnation, lands of tribal members on the reservation, for public purposes, provided that such members shall be reimbursed the full value of improvements they have placed on such lands as determined by appraisal. The manner of appraisal and the procedures governing condemnation shall be established by ordinance of the tribal council, subject to review by the Secretary of the Interior.

(h) To regulate its own procedures, including the adoption and amendment of bylaws; to appoint subordinate boards, commissions, committees, tribal officials and employees not otherwise provided for in this constitution and to prescribe their salaries, tenure and duties; to charter tribal corporations, and to charter and regulate other subordinate organizations for economic and other purposes, subject to review by the Secretary of the Interior when required by Federal law or regulation.

- (i) To represent the tribe and act in all matters that concern the welfare of the tribe and to make decisions not inconsistent with, or contrary to, this constitution.
- (j) To negotiate with the Federal, State, or local Governments, and to advise and consult with representatives of the Interior Department on all activities that may affect the reservation, and in regard to all appropriation estimates and Federal projects for the benefit of the tribe before such estimates or projects are submitted to the Bureau of the Budget and to Congress.
- (k) To borrow money from the Federal Government or other lenders for tribal use.
- (l) To administer any funds or property within the exclusive control of the tribe, and to make expenditures from available funds for public purposes of the tribe, including salaries and remuneration of elective officials, officers and tribal employees. With the approval of the Secretary of the Interior, tribal funds from any source may be authorized for dividend or per capita payments to the members of the tribe.
- (m) To administer charity.
- (n) To make loans to tribal members in accordance with regulations of the Secretary of the Interior, this constitution and other applicable laws.
- (o) To employ legal counsel for the protection and advancement of the rights of the tribe and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, so long as such approval is required by Federal law.
- (p) To enact ordinances, subject to review by the Secretary of the Interior, establishing and governing tribal courts and tribal law enforcement agencies on the reservation; regulating social and domestic relations of members of the tribe; including provision for the issuance of decrees of divorce, provided that all marriages between tribal members shall be in conformity with applicable laws of

the State; providing for the appointment of guardians for minors and mental incompetents; regulating the inheritance of personal property of tribal members; and providing for the removal or exclusion from the reservation of any non-members of the Mescalero Apache Tribe whose presence may be injurious to tribal members or to the interests of the tribe, as determined by the tribal council.

(q) To issue to each of its members a non-transferable certificate of membership, evidencing the equal share of each member in the assets of the tribe, said tribe being in the nature of a non-profit corporation, and to use any net income return to the tribe from corporate enterprises for public and social purposes of the tribe.

(r) To administer oaths; to require, upon proper notice being given stating time and place of hearing and the general nature of the subject to be discussed, any member of the tribe to appear and give testimony before the tribal council; and to provide by ordinance, subject to review by the Secretary of Interior, for punishment of such members upon failure to comply with such requirements, or for giving false testimony.

(s) To enact and provide for the enforcement of ordinances, subject to review by the Secretary of the Interior, for the assessment of taxes, licensing and other fees on persons or organizations doing business on the reservation.

(t) No authority or power contained in this constitution may be delegated by the Mescalero Apache Tribal Council to tribal officials, committees, or associations to carry out any functions or do any thing for which primary responsibility is vested in the tribal council, except by ordinance or resolution duly enacted by the tribal council.

(u) To deposit, to the credit of the Mescalero Apache Tribe, tribal funds, without limitation on the amount in any account, in any National or State bank whose deposits are

insured by any agency of the Federal Government; Provided, that advances to the tribe from funds held in trust in the United States Treasury shall be deposited with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior in connection with such advance, require that the advance be so deposited.

(v) To exercise tribal powers independently, under this constitution, whenever limitations on such free exercise of tribal powers, imposed by regulations of the Secretary of the Interior, are removed; to exercise other inherent powers not heretofore exercised or included in this constitution; and to exercise powers which have been excluded from tribal authority by applicable statutes of Congress, in the event such statutes are amended or rescinded; provided, that except for waiver of Secretarial review or approval authority, the exercise of additional tribal powers, by the tribal council, shall be in conformity with appropriate amendments to this constitution, pursuant to the provisions of Article XV and Article XXVII hereof.

## ARTICLE XII - REVIEW AND APPROVAL OF ENACTMENTS

SECTION 1. Every resolution or ordinance passed by the tribal council shall, before it becomes effective, be presented to the president for approval within five (5) days following the date of its passage. If he approves he shall sign it within ten (10) days following its receipt and deposit it with the Secretary of the Mescalero Apache Tribe for such further action as may be necessary. If he does not sign an enactment of the tribal council, he shall, at the next meeting of the tribal council following its submittal to him for signature, return it to the tribal council with a statement of his objections. It shall thereafter not become effective unless it is again approved by two-thirds of the members present, providing that those present constitute a quorum of the tribal council.

SECTION 2. Every resolution or ordinance which, under this constitution is subject to review by the Secretary

of the Interior, shall be, within ten (10) days following its approval by the president or, in the event of presidential veto, by a two-thirds majority of the tribal council as provided in Section 1 of Article XII above, presented to the Superintendent of the Mescalero Reservation. Within ten (10) days after receipt thereof, the Superintendent shall approve or disapprove the same.

SECTION 3. If the Superintendent shall approve any resolution or ordinance subject to review by the Secretary of the Interior, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of such approval by the Superintendent rescind the said resolution or ordinance for any cause, by transmitting notification to the President of the Mescalero Apache Tribe of such rescission.

SECTION 4. If the Superintendent shall refuse or fail to approve any resolution or ordinance submitted to him within ten (10) days after its receipt, he shall advise the tribal council of his reasons therefor, and if the reasons appear to the tribal council to be insufficient it may, by majority vote, refer the resolution or ordinance to the Secretary of the Interior who shall, within ninety (90) days from the date of receipt, approve or disapprove same in writing; Provided, however, that such resolution or ordinance shall become effective ninety (90) days after the date of receipt unless the Secretary of the Interior shall disapprove in writing such resolution or ordinance.

SECTION 5. Any resolution or ordinance that is, by the terms of this constitution, subject to the approval of the Secretary of the Interior, shall be presented to the Superintendent who shall, within 10 days after receipt thereof, transmit the same to the Secretary of the Interior with his recommendation for or against approval.

SECTION 6. The said resolution or ordinance shall become effective when approved by the Secretary of the Interior.

SECTION 7. Upon request by the tribal council, the Secretary of the Interior may waive any requirement contained in this constitution relating to review or approval of resolutions and ordinances, or to the exercise of other powers of the tribal council. Such waiver shall be for such period of time and under such conditions as the Secretary of the Interior may prescribe.



## ARTICLE XIII - TRIBAL BUDGET AND BUSINESS ENTERPRISES

SECTION 1. Before the beginning of each fiscal year, the tribal council shall adopt and approve an annual tribal budget providing funds for the support of all approved tribal programs. No expenditures of tribal funds may be made except in conformity with the approved budget. The annual tribal budget shall be subject to such review and approval as may be required by the Secretary of the Interior.

SECTION 2. The Mescalero Apache Tribal Council shall, by ordinance, establish the principles and policies governing the operation and control of all enterprises of the tribe.

## ARTICLE XIV - REFERENDUM

SECTION 1. Upon receipt of a petition signed by at least thirty percent (30%) of the qualified voters of the tribe and filed with the secretary of the tribal council demanding a referendum thereon, any proposed or enacted resolution, ordinance or other action of the tribal council shall either be repealed by the tribal council or be submitted by it to the electorate for decision by the tribe in a general election to be held within thirty (30) days after receipt of the petition. The referendum shall be conclusive only if at least thirty percent (30%) of the qualified voters cast their ballots therein.

SECTION 2. When a majority of the members of the tribal council shall request a referendum on any proposed or enacted resolution, ordinance, or other action of the tribal council, the tribal council shall call an election within thirty (30) days thereafter at which the members of the tribe shall approve or disapprove, by majority vote, the ordinance or action in question; Provided, however, that such approval or disapproval shall be effective only in the event thirty percent (30%) or more of the qualified voters cast their ballots in such election.

SECTION 3. No referendum conducted pursuant to the provisions of Section 1 above shall serve to abrogate, modify, or amend any properly approved contract or agreement with third parties who are not members of the Mescalero Apache Tribe.

## ARTICLE XV - CONSTITUTIONAL AMENDMENT

SECTION 1. This constitution may be amended at an election called by the Secretary of the Interior upon request by the tribal council:

(a) Whenever, by majority vote of all members of the tribal council, the governing body of the tribe shall authorize the submission of a proposed amendment to the electorate of the tribe, or

(b) Whenever a minimum of thirty percent (30%) of the qualified voters of the tribe, by signed petition, shall request such amendment.

SECTION 2. If, at such election, the amendment is adopted by majority vote of the qualified voters of the tribe voting therein, and if the number of ballots cast represents not less than thirty percent (30%) of the qualified voters, such amendments shall be submitted to the Secretary of Interior and, if approved by him, it shall thereupon take effect.

## ARTICLE XVI - SESSIONS OF THE TRIBAL COUNCIL

SECTION 1. The tribal council shall meet, upon 24 hours written notice to the membership thereof by the president, at the seat of tribal government, as provided in the bylaws; Provided, that no less than four (4) quarterly sessions shall be held in any year.

SECTION 2. Special sessions of the tribal council may be convened by the president or, if the president shall refuse to act, such special sessions may be convened by any three (3) members of the tribal council upon twenty-four (24) hours written notice signed by said three (3) members.

## ARTICLE XVII - QUORUM; VOTE

SECTION 1. Six (6) members of the tribal council shall constitute a quorum of the membership thereof, provided that the vice-president of the tribe may vote as a member of the tribal council throughout the whole of that meeting only if a quorum is not otherwise present. No enactment of the tribal council shall have any validity or effect in the absence of a quorum of the membership thereof.

SECTION 2. No resolution or ordinance of the tribal council shall have any validity or effect unless it is passed

by the tribal council at a legally called session in which a quorum of the membership was present, and until approved by the president or passed over his veto as provided by Article XII.

## ARTICLE XVIII - ORDINANCES AND RESOLUTIONS

SECTION 1. All final decisions of the tribal council, on matters of permanent interest to members of the tribe and necessary to the orderly administration of tribal affairs, shall be embodied in ordinances, the format of which shall be established in the bylaws of the tribal council. Such enactments shall be available for public inspection at all reasonable times by members of the Tribe.

SECTION 2. All final decisions of the tribal council on matters of temporary interest, or matters relating to particular individuals, officials or circumstances shall be embodied in resolutions. Such actions of the tribal council shall also be subject to public inspection by members of the tribe.

## ARTICLE XIX - PART 2 - THE EXECUTIVE DEPARTMENT: COMPOSITION AND MANNER OF SELECTION

SECTION 1. The Executive Department of the Mescalero Apache Tribal Government shall consist of a president, a vice-president, a secretary and a treasurer.

SECTION 2. The President and Vice-President of the Mescalero Apache Tribe shall be elected. The remaining officers shall be appointed by the president with the concurrence of the tribal council, and persons appointed to fill such offices shall serve during the pleasure of the president, provided that the tribal council must concur in the removal from office of any appointive officer of the tribe.

## ARTICLE XX - PRESIDENT AND VICE-PRESIDENT: TERM OF OFFICE AND QUALIFICATIONS

SECTION 1. The President and Vice-President of the Mescalero Apache Tribe shall be elected for a term of two (2) years. Candidates for the office of president and vice-president must possess the same qualifications required of candidates for council membership as set forth in Article VIII, Section 3 of this constitution. The term of office of

the president and vice-president shall begin at the same time as the terms of members of the tribal council elected at the same election.

ARTICLE XXI - PRESIDENT AND VICE-  
PRESIDENT:  
VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. In the event of a vacancy, for any cause, in the office of the president, the vice-president shall assume the duties of the president until a successor has been duly elected and qualified. In the event of a vacancy, for any cause, in the office of the vice-president, such vacancy shall be filled by a tribal member appointed by the tribal council, such person to serve until a successor has been duly elected and qualified. In the event of a vacancy, for any cause, in both executive offices, such vacancies shall be filled at a special election, called by the tribal council and conducted in conformity with applicable sections of Article IX of this constitution; except that the membership of the election board shall be appointed by the tribal council.

ARTICLE XXII - DUTIES OF OFFICERS

SECTION 1. The President of the Mescalero Apache Tribe shall exercise the following powers as the chief executive officer of the tribe:

- (a) The president shall serve as the Chairman of the Mescalero Apache Tribal Council, but he shall not have the right to vote on any issue except to break a tie vote of the council in the absence of the vice-president.
- (b) The president shall appoint all non-elected officials and employees of the executive department of the tribal government and shall direct them in their work, subject only to applicable restrictions embodied in this constitution or in enactments of the tribal council establishing personnel policies or governing personnel management.
- (c) The president, subject to the approval of the tribal council, may establish such boards, committees or sub-committees as the business of the council may require, and shall serve as an ex-officio member of all such committees and boards.

(d) The president shall serve as contracting officer for the Mescalero Apache Tribe, following approval of all contracts by the tribal council.

(e) The president shall have veto power over enactments of the tribal council, as provided in Article XII, Section 1.

(f) Subject to such regulations and procedures as may be prescribed by ordinance of the tribal council, the president shall have power to grant pardon, after conviction for all offenses, to restore tribal members to eligibility for elective office in the tribal government, subject to the restrictions contained in Article X, Section 1.

(g) The president shall direct the tribal police, to assure the enforcement of ordinances of the tribal council.

(h) The president shall hold no other tribal office or engage in private remunerative employment without the consent of the tribal council, during his term as president.

SECTION 2. In the absence of the president, the vice-president shall preside and shall have all powers, privileges and duties of the president.

SECTION 3. The vice-president may function as chairman of the tribal council or of any committee thereof in the absence of, or at the direction of, the president. When presiding as chairman of the tribal council he shall have the right to vote only in the event the council or any committee thereof is equally divided on an issue. In his capacity as vice-president, he may be counted for purposes of constituting a quorum at any such meeting and when so counted may vote on any business then before the council.

SECTION 4. The vice-president may attend any session of the tribal council or of any council committee and he may participate therein, but he shall not have the right to vote unless required to make a quorum or to break a tie.

SECTION 5. The vice-president shall perform such other duties as the president, with the consent of the tribal council, may direct.

ARTICLE XXIII - THE SECRETARY OF THE  
MESCALERO APACHE TRIBE

SECTION 1. The Secretary of the Mescalero Apache Tribe shall be appointed from within the membership of the tribal council.

SECTION 2. The secretary shall call the roll, handle all official correspondence of the council, keep the minutes of all regular and special meetings of the tribal council, and it shall be his duty to submit promptly to the Superintendent of the agency copies of minutes of all regular and special meetings of the tribal council. Following each general election, the secretary shall certify to the Superintendent of the reservation the duly elected president, vice-president, and councilmen. In the absence of the president and vice-president, the secretary shall carry on the duties of the president, subject to all restrictions thereon embodied in this constitution.

ARTICLE XXIV - TREASURER OF THE MESCALERO  
APACHE TRIBE

SECTION 1. The treasurer shall be appointed from within the membership of the tribal council.

SECTION 2. (a) The treasurer shall accept, receipt for, keep and safeguard all funds under the exclusive control of the tribe by depositing them in a bank insured by an agency of the Federal Government, or in an Individual Indian Money Account as directed by the Mescalero Apache Tribal Council, and shall keep an accurate record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his custody to the council at regular meetings and at such other times as requested by the council. He shall not pay or otherwise disburse any funds in custody of the council except when properly authorized to do so by the council.

(b) The books and records of the treasurer shall be audited at least once a year by a competent auditor employed by the council, and at such other times as the council may direct.

(c) The treasurer shall be required to give a surety bond satisfactory to the council and the Commissioner of Indian Affairs.

(d) The treasurer shall be present at all meetings of the council unless prevented by circumstances beyond his control.

(e) All checks shall be signed and all vouchers shall be approved for payment by two officers of the tribe as follows: the president or the vice-president, together with the treasurer or, in his absence, the secretary.

(f) In the absence of the president, vice-president, and secretary, the treasurer shall carry on the duties of the president.

SECTION 3. The tribal council may require all responsible tribal officials and employees to be bonded. The premium for the bond shall be paid by the tribe.

## ARTICLE XXV - PART III - THE JUDICIARY

SECTION 1. *The judicial powers of the Mescalero Apache Tribe shall be vested in the Tribal Courts, including a Trial and Appellate Court. The jurisdiction of the Tribal Courts shall extend to all matters, criminal and civil, except where prohibited by the Constitution, laws or treaties of the United States of America, and except as such jurisdiction may be otherwise limited from time to time by ordinance of the Tribal Council. [As amended March 4, 1977]*

SECTION 2. The criminal offenses over which the Courts of the Mescalero Apache Tribe have jurisdiction may be embodied in a Code of Laws, adopted by ordinance of the tribal council, and subject to review by the Secretary of the Interior.

SECTION 3. The duties and procedures of the courts shall be determined by ordinance of the tribal council.

## ARTICLE XXVI - COMPOSITION OF THE TRIBAL COURTS

SECTION 1. The trial court shall consist of a chief judge and two associate judges, appointed by the President of the Mescalero Apache Tribe, with the concurrence of not less than a three-fourths majority vote of the whole membership of the tribal council.

SECTION 2. The tribal council shall sit as a court of appeals whenever necessary and may hear appeals at any regular or special meeting.

SECTION 3. The tenure and salary of tribal judges shall be established by ordinance of the tribal council.

SECTION 4. *No person shall be appointed to the office of the Tribal Judge unless he is an Indian as defined herein, not less than thirty-five years nor more than seventy years of age; nor shall any person be appointed as a Tribal Judge who has ever been convicted of a felony, or, within one year, last past, of a misdemeanor.*

*For purposes of this Section only, an "Indian" is defined as follows: An individual who possesses at least one-quarter Indian blood, and is a member of any federally-recognized Tribe, nation, or band of Indians, or is an Eskimo, Aleut, or other Alaskan native. [As amended February 3, 1981]*

#### ARTICLE XXVII - INHERENT POWERS OF THE MESCALERO APACHE TRIBE

SECTION 1. No provision of this constitution shall be construed as a limitation on the inherent residual sovereign powers of the Mescalero Apache Tribe. Any such powers, not delegated to the representative tribal government by this constitution, are retained for direct exercise by the people through referendum, as provided for herein, or for exercise by the tribal government following amendment of the constitution.

#### ARTICLE XXVIII - SAVING CLAUSE AND REPEAL OF PREVIOUS CONSTITUTION

SECTION 1. The Constitution and Bylaws of the Apache Tribe of the Mescalero Reservation, approved on March 25, 1936, under the provisions of Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), is hereby repealed and superseded by this constitution.

SECTION 2. All ordinances and resolutions heretofore enacted by the Mescalero Tribal Business Committee shall remain in full force and effect to the extent that they are not inconsistent with this constitution.

SECTION 3. The incumbent tribal business committee and incumbent tribal officers shall remain in office and shall be entitled to exercise all powers granted by this constitution to the tribal council and tribal officers until such time as the first election of the tribal council and tribal officers is held under this constitution.



## ARTICLE XXIX - OATH OF OFFICE

SECTION 1. No elective official of the Mescalero Apache Tribe shall be officially installed in the office to which such official is elected unless and until the following oath has been duly administered by a Judge of the Mescalero Apache Tribal Court:

*"I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; that I will faithfully and impartially carry out the duties of my office, uphold the Constitution of the Mescalero Apache Tribe, and represent the interests of the Mescalero Apache people. These things I will do to the best of my ability, so help me God."*

## ARTICLE XXX - RATIFICATION OF REVISED CONSTITUTION

SECTION 1. This constitution, when adopted by a majority vote of the qualified voters of the Mescalero Apache Tribe, voting at an election called for that purpose by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall cast their ballots, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of approval.

## CERTIFICATION OF ADOPTION

Pursuant to an election authorized by the Secretary of the Interior on December 11, 1964, the attached Revised Constitution of the Apache Tribe of the Mescalero Reservation was submitted to the qualified voters of the tribe and was on December 18, 1964, duly adopted by a vote of 190 for and 103 against, in an election in which at least 30 percent of the 635 members entitled to vote cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

KENNETH L. PAYTON  
*Chairman, Election Board*

CHRISTIE LA PAZ  
*Election Board Member*

ALTON PESO  
*Election Board Member*

APPROVAL

I, John A. Carver, Jr., Under Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Revised Constitution of the Apache Tribe of the Mescalero Reservation.

Approval recommended:

JAMES E. OFFICER  
*Associate Commissioner*  
*Bureau of Indian Affairs*

JOHN A. CARVER, JR.  
*Under Secretary of the Interior*

[Seal]

WASHINGTON, D.C., *January 12, 1965*