

RESOLUTION NO. 6-24-80-86

DEPT. OF REVENUE  
ATTORNEYS  
1300 AUG -4 AM 8 01

AN ORDINANCE TO AMEND THE TRIBAL COURT CODE, RESOLUTION 9-5-79-8, TO PROVIDE FOR CIVIL REMEDIAL FORFEITURES

WHEREAS, the Bad River Tribal Council has adopted a comprehensive Tribal Court Code, Resolution 9-5-79-8, to govern the practice and procedure in tribal court; and

WHEREAS, the Bad River Tribal Council wishes to exercise the full measure of authority over non-members consistent with Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978); and

WHEREAS, the Bad River Tribal Council wishes to adopt civil remedial measures to secure compliance with its ordinances and to compensate the tribe for damage done by members and non-members to the peace, security, welfare or resources of the Bad River Reservation; and

WHEREAS, without relinquishing or curtailing any of its inherent sovereignty the Bad River Tribal Council wishes to secure to members and non-members the rights and protections of the Indian Civil Rights Act, 25 U.S.C. 1301 et seq.;

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Court Code, Resolution 9-5-79-8, is hereby amended by the addition of the attached ordinance, entitled "Civil Remedial Forfeitures", as Chapter XXIII thereof, effective on the date of approval hereof.

CERTIFICATION

I, the undersigned, as Secretary of the Bad River Tribal Council, hereby certify that the Tribal Council is composed of 7 members, of whom 5 being present constituted a quorum at a meeting thereof duly called, convened and held

on this 24<sup>th</sup> day of June, 1980, and that the fore-  
going resolution was duly adopted at such meeting by an affirm-  
ative vote of 3 for/and 1<sup>abstain</sup> 0 against, and that  
said resolution has not been rescinded or amended in any way.

Barbara Livingston  
Secretary, Bad River Tribal Council

vides for a civil remedial money penalty, such officer shall issue a citation to such person, serve a copy of same as provided in Chapter XI hereof, and file a copy with the tribal court. The issuance of a citation by an enforcing officer in connection with a breach of an ordinance is adequate process to give the tribal court jurisdiction over the person upon the filing with the court of such citation.

Section 4. The citation shall contain a complaint, a case history, and a report of court action on the case. It must appear on the face of the citation that there is a reasonable basis to believe that a breach of an ordinance has been committed and that the defendant has committed the breach. The citation form shall provide the following:

(a) the name of the person to whom the citation was issued, together with the person's age and address, if available;

(b) the tribal permit or license number of the defendant, if applicable;

(c) the name and tribal department of the issuing officer;

(d) the breach alleged, the time and place of occurrence, a statement that the defendant committed the breach, the ordinance provision charged, and a description of the breach in language which can be readily understood;

(e) the maximum civil remedial money penalty for which the defendant might be found liable;

(f) a date, time and place for the tribal court appearance, and a notice to appear;

Section 8. In all actions under this subchapter, the tribe shall have the burden of showing by a preponderance of the evidence that defendant breached the ordinance charged in the citation. The tribe shall not, however, be required to show that defendant intended to breach the ordinance charged.

Section 9. If the defendant is found to have breached the ordinance charged, the tribal court shall enter judgment against the defendant and in favor of the tribe for a monetary amount not to exceed the maximum civil remedial money penalty provided for the breach, together with court costs, or, in cases where a deposit and stipulation of default has been made by the defendant, for an amount up to the amount of the deposit. If the judgment is for an amount less than the amount of the deposit, the balance shall be returned to the defendant.

Section 10. All civil remedies are available in order to enforce the judgment of the tribal court, including the power of civil contempt. A judgment shall become a lien upon any available property of the defendant located within the Bad River Reservation or within the jurisdiction of the tribal court. When necessary, the tribe may bring suit in any court on the judgment against the defendant or property of the defendant located beyond the jurisdiction of the tribal court.

Section 11. Deposits and money paid on judgments rendered pursuant to this subchapter shall be tendered to the tribal Clerk of Court. Within 20 days after judgment on a deposit or receipt of funds in payment of a judgment the tribal Clerk of Court shall tender such sums to the tribal treasurer, who shall place such sums in the general account of the tribe for such disposition as the Tribal Council shall make.

Subchapter B -- Civil Remedial Forfeiture of Property

Section 12. Whenever any ordinance of the tribe shall provide for the civil remedial forfeiture of any property for breach of such ordinance by any person, the tribe shall proceed against the property according to the procedures set forth in this subchapter. The provisions of other chapters of the Tribal Court Code shall apply to proceedings instituted pursuant to this subchapter to the extent not inconsistent herewith.

Section 13. Proceedings for civil remedial forfeiture of property shall be instituted by the filing of a complaint in rem against the property in tribal court by an enforcing officer. A complaint shall be filed whenever an enforcing officer has a reasonable basis to believe that a tribal ordinance has been breached and the property is forfeitable under the tribal ordinance.

Section 14. It must appear on the face of the complaint that there is a reasonable basis to believe that a tribal ordinance has been breached and the property is forfeitable under that ordinance. The complaint shall contain:

- (a) a description of the property against which proceedings are instituted;
- (b) the ordinance provision allegedly breached;
- (c) a description of the breach in language which can be readily understood;
- (d) the name, address and other pertinent information about the owner of the property, if known, or a statement that the owner of the property is unknown;
- (e) a request for an order to seize the property; and
- (f) the name and attestation of the complaining enforcing officer.

Section 15. If the owner of the property is known, the summons, complaint, and notice of hearing on an order to seize shall be served on the owner as provided in Chapter XI hereof. If the owner of the property is unknown or cannot be located, service shall be made by posting in the central tribal office and the Tribal Rights Protection office and by publication once in a newspaper of general circulation in Ashland County. An affidavit of publication and posting shall be filed with the tribal court.

Section 16. All property alleged to be subject to civil remedial forfeiture may be seized pursuant to an order to seize issued by the tribal court and held by the tribal court pending disposition of the complaint or until a bond has been posted with the tribal court. Property may be seized by an enforcing officer prior to filing of a complaint and issuance of an order to seize if:

(a) a tribal ordinance authorizes the immediate seizure of the property; or

(b) the property seized presents a danger to persons, property or a natural resource of the Bad River Reservation; or

(c) an enforcing officer has a reasonable basis to believe that without immediate seizure the property will be removed from the jurisdiction of the tribe.

A receipt describing the property seized shall be issued to the person in possession of the property at the time of seizure, if such person is present.

Section 17. The hearing on the order to seize shall be heard within 30 days of the filing of the complaint. The tribe shall use its best efforts to attempt to provide actual notice of the hearing to the owner of the property.

Section 18. At the hearing on the order to seize the tribe shall have the burden of showing that there is a reasonable basis to believe that the property is subject to civil remedial for-

feiture under the tribal ordinance alleged and that the property is within the jurisdiction of the tribal court. The tribe may present evidence by testimony or affidavit. Any person alleging ownership of the property may appear and present argument and evidence by testimony or affidavit.

Section 19. If after the hearing the tribal court finds that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged and that the property is within the jurisdiction of the court, it shall issue an order to seize directing an enforcing officer to seize the property and hold it pending disposition of the complaint. If the tribal court finds to the contrary, it shall dismiss the complaint and, if property was seized prior to the hearing, order the property released immediately.

Section 20. An order to seize shall contain the following:

(a) a description of the property subject to the order;

(b) the date of filing of a property complaint for the forfeiture, and the name and department of the complaining officer;

(c) a finding that the property is within the jurisdiction of the court;

(d) a finding that there is a reasonable basis to believe that the property is subject to a civil remedial forfeiture, a brief factual narration of the ground for the finding, and citation to the ordinance allegedly breached;



- (e) notice of the date and place of trial;
- (f) notice of the right to request a jury trial; and
- (g) notice that the property may be released by the posting of a proper bond.

The order to seize shall be served as provided in Section 15.

Section 21. The enforcing officer shall make a reasonable effort prior to the hearing on the order to seize to ascertain whether a perfected security interest exists in the property, and if one exists shall give notice to the secured party of any hearing in the case and shall also give the secured party at least 15 days notice of the time and place of any sale conducted pursuant to Section 25.

Section 22. The person determined by the tribal court to be the lawful owner of the property seized may be allowed to post a bond in the amount of the value of the seized property as determined by the tribal court. When a proper bond has been posted with the court, the property shall be returned to the owner. The bond shall be available to be levied against if the owner does not return the property to the custody of the tribal court in proper condition or if the court determines after trial that the property should be forfeited.

Section 23. Any person alleging ownership of the property seized shall have the right to a jury trial if request therefor is made within 15 days after service of the order to seize.

Section 24. At trial the tribe shall have the burden of showing by a preponderance of the evidence that the property is forfeitable under the ordinance charged. If the tribe fails to meet this burden, the tribal court shall dissolve the order to seize, enter judgment awarding title to the property to the owner, and order the immediate release of the property or discharge of the bond. If the tribe meets its burden, the court shall dissolve the order to seize, enter judgment awarding title to the property to the tribe, together with court costs, and place the property in the hands of the tribe for disposition or, if bond was posted, order the bond forfeited to the tribe.

Section 25. Within 30 days after entry of a judgment forfeiting property to the tribe, the tribe shall sell the property at the highest obtainable price. The net proceeds of such sale, after deducting the expenses of sale, shall be remitted to the tribal treasurer, who shall place such sums in the general account of the tribe for such disposition as the Tribal Council shall make. If there is a perfected security interest in the property forfeited, and the breach which occasioned the forfeiture was not committed with the knowledge, consent, or connivance of the secured party, there shall also be deducted from the proceeds of sale the amount due under the security agreement, and such amount shall be

paid to the secured party, but if a sufficient amount does not remain for such purpose after the other deductions, then the amount remaining shall be paid over.

Section 26. Any perishable property seized pursuant to this subchapter may be sold by an enforcing officer at the highest available price, and the proceeds of the sale shall be tendered into tribal court to await such disposition of the proceeds as the tribal court shall direct.

Subchapter C -- Miscellaneous Provisions

Section 27. No person in a suit brought pursuant to this chapter shall be required to answer questions which would tend to show that such person breached the ordinance under which the suit was brought.

Section 28. Any person who is concerned in the commission of a breach remediable under this chapter is a principal and may be adjudged to have committed the breach although such person did not directly commit it and although the person who did directly do so has not been subjected to the remedial provisions of this chapter. A person is concerned in the commission of a breach if such person:

- (a) directly commits the breach;
- (b) aids and abets the commission of the breach; or
- (c) is party to a conspiracy with one or more others to commit the breach or advises, hires, counsels, or otherwise procures another to commit the breach.

Section 29. The civil remedial forfeiture remedies governed by this chapter are not mutually exclusive, nor shall they be the sole and exclusive remedies of the tribe for breach of its ordinances. Nothing in this chapter shall restrict or curtail the right of the tribe to prosecute or seek the criminal prosecution of any defendant or owner or to institute a civil action for damages in any court against a defendant or owner. In addition to the civil remedies provided in this chapter, the tribal court may order a defendant or owner to perform or refrain from performing such acts as may be necessary fully to protect the tribe, its members, its property, or its natural resources. The tribal court may order abatement of a nuisance, restoration of a natural resource, or other appropriate action designed to eliminate or minimize damage caused by a defendant or owner. The tribal court may, where provided by ordinance, revoke or suspend any or all tribal permits, licenses or privileges.