

FILED
IN THE TRIBAL COURT
KICKAPOO TRIBE IN KANSAS

IN THE TRIBAL DISTRICT COURT
KICKAPOO TRIBE IN KANSAS

AUG 17 2015

BY 
COURT CLERK

THE KICKAPOO TRIBE OF INDIANS)
OF THE KICKAPOO RESERVATION)
IN KANSAS,)

Plaintiff,)

vs.)

BOBBI DARNELL,)

Defendant.)

Case No. CIV 015-29

PETITION FINDING VIOLATION OF THE KICKAPOO TRIBE IN KANSAS' STANDARD
PROCEDURES FOR PREPARING, ENACTING AND ADMINISTERING AN ANNUAL
TRIBAL BUDGET ORDINANCE

COMES NOW the Kickapoo Tribe in Kansas and in support of this Petition states
as follows:

1. The Kickapoo Tribe in Kansas of the Kickapoo Reservation in Kansas is a federally
recognized Indian Tribe and is organized in accordance with the provisions of the Indian
Reorganization Act of June 18, 1934 (48 Stat 984), as amended by the Act of June 15, 1935 (49
Stat. 378).

2. The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas is governed by
the Kickapoo Tribal Council who is authorized under Article III of the Kickapoo Constitution
and By-Laws which were approved by the Secretary of the Interior on February 26, 1937.

3. The Defendant is the former Treasurer of the Kickapoo Tribal Council from October 2011-October 2014. She can be served with process at her residence which is 737 130th St., Horton, KS 66439.

4. Pursuant to the Tribal Constitution and By-Laws of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, Article V, Section 1(e), the Kickapoo Tribal Council shall exercise the power to “make and enforce ordinances...” (See Exhibit 1, *Kickapoo Constitution and By-Laws*)

5. Further duties of the Tribal Council are not “preserve and safeguard all funds in the care of the Council.” (See Exhibit 1, *Kickapoo Constitution and By-Laws*)

6. On January 8, 1999, the Kickapoo Tribal Council adopted a Standard Procedures for the Kickapoo Tribe in Kansas for Preparing, Enacting, and Administering an Annual Budget. (See Exhibit 2, *Ordinance No. KT099-01, Kickapoo Tribe in Kansas Budget Ordinance of 1999*)

7. Pursuant to that Ordinance, Article I, Section 3, defines the “BUDGET OFFICER” as the Tribal Chairperson. Section 5 defines the “CHIEF FINANCIAL OFFICER” as the Tribal Treasurer. Accordingly, Section 1 defines the “BUDGET YEAR” as the fiscal year for which a budget is made and Article 2, Section 3 reads that the fiscal year shall begin on the first day of January of each year. (See Exhibit 3, *Standard Procedures for the Kickapoo Tribe for Preparing, Enacting, and Administering an Annual Budget*)

8. The Ordinance at Article 2, Section 1 states that,

“The purpose of these standard procedures is to adopt rules governing the Kickapoo Tribe in Kansas in its proceedings for administering the financial affairs of the Tribal Council, and to establish a standard procedure for: (1) the making and administration of budgets, (2) placing responsibility for the tasks related to budget preparation and administration, (3) the determination of net revenue from any gaming activities, (4) taxes and other revenues in such a manner that budgets may be balanced on the basis of actual revenues and obligations within the budget period, (5) and the establishment of appropriations, the payment of debt, and the control of other expenditures....”

9. The Ordinance further declares in Article III, Section 6, “The budget shall be adopted by the favorable votes of not less than a majority of all of the members of the tribal council at a meeting duly called and convened, in which a quorum is present.”

10. A majority of the supplemental tribal budget revenue is from proceeds obtained from the Kickapoo Tribe’s gaming operation, the Golden Eagle Casino (GEC) located on the Kickapoo Reservation.

11. The Kickapoo Tribe operates its gaming enterprise, the Golden Eagle Casino, pursuant to the Indian Gaming Regulatory Act (IGRA) (25 U.S.C. 2710). The Indian Gaming Regulatory Act was enacted by the United States Congress on October 17, 1988, to regulate the conduct of gaming on Indian Lands. IGRA establishes the regulatory structure and oversight for Indian gaming in the United States. The Bureau of Indian Affairs’ Office of Indian Gaming Office of Indian Gaming (OIG) will reviews and approves tribal Revenue Allocation Plans (RAP) required under the IGRA which detail how net casino revenues will be allocated.

12. The Tribal Council approved the *Kickapoo Tribe in Kansas "Net Gaming Revenue Allocation Ordinance"* which formalized the plan for allocation of net gaming revenue. Accordingly, "...31% of the Net Gaming Revenue shall be used to fund supplemental Tribal Government Operations and Programs...30% of the Net Gaming Revenue shall be used for per capital distributions to all enrolled eligible tribal members..., and 39% of the Net Gaming Revenue shall be used to fund tribal economic development..." (See Exhibit 4, *Kickapoo Tribe in Kansas Net Gaming Revenue Allocation Ordinance.*"

13. The Tribal Council has acquired meeting minutes which show that during a Tribal Council meeting held on October 16, 2013 that:

"Lester Randall made a motion to adopt Resolution #KT14-37 approving the Kickapoo Tribe in Kansas Fiscal Year 2014 Budget in the amount of \$17,000,000 with Indirect Costs at \$1,696,000. Seconded by Curtis Simon, Sr.

5 for, 0 against, 0 abstentions; Chair not voting; motion passed."

(See Exhibit 5, *meeting minutes of Wednesday October 16, 2013 and accompanying Exhibit 6 Resolution KT14-37*)

14. At a regular Tribal Council meeting held on November 6, 2014,

"Tina Wahwasuck made a motion to amend action which approved Fiscal year 2014 budget for the Kickapoo Tribe in Kansas. Lester Randall, Tina Wahwasuck, and Curtis "Bill" Simon, Sr., recall being present at an October 16, 2013 Tribal Council Meeting, but all three individuals recall this issue being tabled until a later date. Mr. Randall affirmatively denies making a motion to approve this

Resolution and Mr. Simon affirmatively denies seconding the motion. Motion seconded by Curtis "Bill" Simon.

Roll Call Vote: Russell Bradley, yes -Fred Thomas, yes – Tina Wahwasuck, yes – Curtis "Bill" Simon, yes – Westley "Sagtuk" Banks, yes

5 for, 0 again, Chairman abstaining; motion passed."

(See Exhibit 7, *meeting minutes of Thursday November 6, 2014*)

15. On November 6, 2013 Curtis "Bill" Simon Sr. also submitted a written statement which read, "I do not remember this motion being made by anyone. It is my understanding that the issue was tabled." (*See Exhibit 8*)

16. Therefore, the October 16, 2013 meeting minutes and Resolution KT14-37 were created fraudulently to appear as if the 2014 Kickapoo Tribal Budget was approved.

17. In early 2014 the Kickapoo Tribal Council produced a Kickapoo Tribe in Kansas Overview Budget FY 2014 Projected (*See Exhibit 9, Kickapoo Tribe in Kansas Overview Budget FY 2014 Projected*)

18. Contained within that overview, which were fabricated but held out as approved, was projected revenue of \$1,696,000.00 for indirect costs, \$3,203,812.00 for Golden Eagle Casino Revenue and \$200,000.00 for farm revenue. The Kickapoo Tribe Gaming Commission Budget was \$1,100,000.00.

19. All budget request forms from every tribal department were signed by Bobbi Darnell, Tribal Council Treasurer as the “Budget Officer” and not Chairman Steve Cadue even though Bobbi Darnell was not the Budget Officer. (See Exhibit 10, *budget request forms*)

20. Indirect cost figures contained in the 2014 budgets were significantly inflated. Based on the indirect cost general ledgers produced by the Tribal Accounting Contract Specialist Evva Mayfield, in 2014 the Tribe received \$596,671.30 total in indirect costs. That is over \$1,000,000 less than budgeted amount of \$1,696,000.00. If the Tribe would have spent the aggregate of the awarded amounts, they would still only have received approximately \$700,000.00 based on the federal grants and contracts. (See Exhibit 11, *Indirect cost general ledger entries*)

21. When the new Tribal Council convened in October 2014, it discovered over \$500,000.00 in debts and liabilities approved by the Tribal Council but not allocated for in the 2014 projected budget.

22. Based on audited figures from the Golden Eagle Casino, completed by the Certified Public Accounting Firm of Joseph Eve, tribal officials knew early in 2014 that the projected revenue would be far less than what was budgeted. The audit was received on March 18, 2014 and shows that the Golden Eagle Casino’s Net Operating Revenue was \$2,801,694.00. With 30 % being allocated to the Per Capita Account, the Tribe’s budgeted amount from the Golden Eagle Casino for both Tribal Operations and Economic Development should have been \$1,961,185.80. (See Exhibit 12, *Golden Eagle Casino Audited Financial Statements*).

23. On February 14, 2014, Kickapoo Tribal Chairman and Budget Officer Steve Cadue sent a memo to GEC General Manager, Robert Nanomantube which cited the requirements of the *Budget Ordinance of 1999* and further gave Mr. Nanomantube notice that the GEC budget would need to be decreased from \$3,203,812.00 to \$2,003,812.00 for the 2014 budget. (See Exhibit 13, *February 14, 2014 Memorandum from Cadue to Nanomantube*)

24. After learning that the audited revenues had decreased and following the memorandum to GM Nanomantube, neither the Budget Officer Steve Cadue nor the Chief Financial Officer Bobbi Darnell, still did not make any cuts or decreases to the tribal operating budgets or to the budget of the Kickapoo Tribe Gaming Commission.

25. On July 8, 2014, GM Nanomantube sent a memorandum to Budget Officer Steve Cadue indicating that the 2014 decline in revenues was more severe than in previous years and these decreases would “mean a reduction in tribal distributions...” (See Exhibit 14, *July 8, 2014 Memorandum from Nanomantube to Cadue*) Once again, the Budget Officer and the Chief Financial Officer continued to operate under the continuing budget without reduction from the routine GEC distribution, without decreasing the budget of the Kickapoo Tribe Gaming Commission and further failed to reimburse the GEC for over \$500,000 in unpaid insurance premiums the tribal government owed the GEC. In fact the total 2014 distributions to the Tribe from GEC were \$3,398,977.70 (See Exhibit 15, *GEC 2014 Tribal Distributions*)

26. Instead of reducing the budgets in accordance with actual revenues, the Tribal Council transferred \$486,560.32 from the Tribe’s farm account to the General Fund. Pursuant to the

overview budget, only \$200,000 in revenue was projected from the farm. According to Tribal Comptroller Edward Berger, these transfers were completed “at the direction of Tribal Treasurer Bobbi Darnell to pay payroll and other daily operational expenses.” (See Exhibit 16, *August 3, 2014 statement of Edward Berger*) No budget reductions were completed at the tribe and the Director of the farm, Wesley Cadue was not aware that the transfers out of his farm account were occurring.

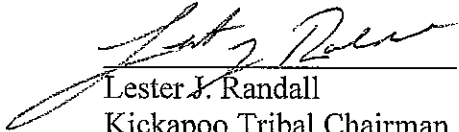
27. The Chief Financial Officer, Bobbi Darnell violated the Budget Ordinance Article V. As the Chief Financial Officer he/she “shall have charge of the administration of the financial affairs of the Kickapoo Tribe and to that end shall supervise and be responsible for the disbursement of all monies and have control over all expenditures to insure that appropriations are not exceeded. She failed to exercise reasonable and ordinary care to insure that appropriations were not exceeded. In fact, appropriations were exceeded to the point where the Tribe could not pay its liabilities and the GEC had to write off over \$500,000 that the Tribe could not reimburse for insurance premiums.

WHEREFORE, the Kickapoo Tribe prays for an Order from this Court finding that Bobbi Darnell violated the Budget Ordinance as the Treasurer and Chief Financial Officer of the Kickapoo Tribe, that she should be subject to civil penalties and for any such further relief as the Court deems just and equitable.

Respectfully submitted,

Lester J. Randall
Kickapoo Tribal Chairman
1107 Goldfinch Rd.
Horton, KS 66439
Phone (785) 486-2131, Ext. 236
Fax (785) 486-2801

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lester J. Randall", is written over a horizontal line.

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