

HOPI TRIBE EDUCATION ENDOWMENT FUND

ORDINANCE 54

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Section 101. Preamble.

There is hereby established The Hopi Tribe Education Endowment Fund (hereinafter "the Fund"), a segregated fund of the Hopi Tribe to be formed and maintained from donations, gifts, subscriptions and bequests, the principal of which Fund shall be held in trust in perpetuity and invested by the Officers of the Fund under the direction of the Executive Committee, the income only of the Fund shall be expended in support and maintenance in perpetuity of the educational needs of the members of the Hopi Tribe.

All gifts, bequests, subscriptions, and donations to the Fund shall on payment to the Fund be added to and become a part of such Fund to be held in trust in perpetuity for the purposes herein stated.

This Ordinance is made a covenant and agreement on the part of The Hopi Tribe, with every person who shall make a donation, gift, subscription or bequest, or promise to make a gift, donation or bequest to the Fund, that the principal of such Fund shall be held in trust in perpetuity; and the income only thereof be used by the Fund for the purposes herein stated; and that the contributions to the Fund which shall be restricted by the donors to particular educational purposes, either as to principal or income, shall be used as the donors direct, and not otherwise.

Section 102. Purposes.

The Fund is a charitable, nonprofit public benefit program of the Hopi Tribe created, organized, and maintained exclusively for educational purposes, and to further the following purposes:

- A. To provide a perpetual education endowment fund of the Hopi Tribe segregated from the Hopi Tribe's General Funds and managed under the terms of this Ordinance.
- B. To provide a perpetual source of financial assistance to Hopi students of all ages.
- C. To provide a perpetual source of funds for educational research of importance to the Hopi Tribe.
- D. To provide a perpetual source of funds for other educational programs of importance to the Hopi Tribe.

- E. To provide a perpetual source of funds to provide for charitable and educational activities in support of the educational needs, goals, and programs of the Hopi Tribe.
- F. To foster the creation of new and creative strategies to address the Hopi people's areas of greatest educational need.
- G. To provide new and innovative fiscal methods to address the unique difficulties faced by the Hopi Tribe in the area of education and the provision of educational opportunities.

Section 103. Powers.

- A. This Fund is organized, and shall at all times be operated exclusively to benefit the Hopi Tribe and to carry out the educational purposes thereof, including but not limited to educational assistance and the advancement of the educational needs, programs, and purposes of the Hopi Tribe.
- B. The Fund shall solicit, accept, administer, and disburse gifts, grants, and property of every kind from both private and public sources for the support of the educational goals and needs of the Hopi Tribe and consistent with the goals of the Fund. The Fund may take, hold, or decline by bequest, devise, gift, grant, purchase, or otherwise, either absolutely or jointly with another, any property, real, personal, tangible or intangible, or any interest therein, without limitation as to amount or value; sell, convey, or otherwise dispose of such property, and invest, reinvest, or deal with the principal or income in such a manner as, in the judgment of the Executive Committee, will best promote the purposes of the Fund, without limitation except such as may be contained in the instrument under which such property is received, this Ordinance, the By-Laws of the Fund, or any applicable law.
- C. The Fund shall initiate and maintain a continuous program for the solicitation of funds, directly or indirectly, from the general public, the Hopi community, governmental units, benefactors of charitable and educational programs, and any other source that may be identified.
- D. The Fund shall use its funds in some or all of the following activities:

1. To provide a perpetual source of financial assistance to Hopi students of all ages.
 2. To engage in charitable activities in support of the educational needs, goals, and programs of the Hopi Tribe.
 3. To provide a perpetual source of funds for educational research of importance to the Hopi Tribe.
 4. To provide a perpetual source of funds for other educational programs of importance to the Hopi Tribe.
 5. To foster the creation of new and creative strategies to address Hopi educational needs.
 6. To provide new and innovative fiscal methods to address the unique difficulties faced by the Hopi Tribe in the area of education and the provision of educational opportunities.
- E. The Fund shall enjoy all powers necessary or convenient to achieve the purposes for which it is organized, including but not limited to:
1. To sell for cash or on credit, convert, redeem, exchange for other securities or other property, or otherwise dispose of any securities or other property at any time held by it;
 2. To invest, reinvest, or deal with the principal or income of any investment of the Fund in such a manner as, in the judgment of the Executive Committee, will best promote the purposes of the Fund, without limitation except such as may be contained in the instrument under which such investment is received, this Ordinance, the By-Laws of the Fund, or any applicable law.
 3. To vote personally or by general or limited proxy, any shares of stock which may be held by it at any time, and similarly to exercise personally or by general or by limited power of attorney any right appurtenant to any securities or other property held by it at any time;
 4. To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper to carry out the purpose of the

Fund and to pledge any securities or other property held by the Fund for the repayment of any such loan;

5. To hold part or all of the Fund as uninvested funds;
 6. To employ agents and counsel and to pay their reasonable expenses and compensation, and to delegate to them any powers necessary for the completion of their proscribed duties;
 7. To register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities in bearer form;
 8. To make, execute and deliver, any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases, or other instruments in writing.
- F. No substantial part of the activities of the Fund shall be the carrying on of propaganda or otherwise attempting to influence legislation. The Fund shall not participate or intervene in (including the publishing or distributing of statements) any political campaign or activity on behalf of any candidate or potential candidate for public office.
- G. No part of the principal or the income of the Fund shall inure to the benefit of any Member, anyone on the Executive Committee, or any Officer of the Fund or to any other private person, except that the Fund shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions to further the purposes for which it is organized.
- H. The Fund shall provide in its solicitation and accounting procedures for the earmarking of contributions for particular education purposes as well as providing for the solicitation and accounting of the non-earmarked contributions. The Fund shall adopt procedures adequate to ensure that funds received for a particular purpose, and income received from such funds, are applied to the purposes for which they were contributed.

Section 104. Dissolution of the Fund.

- A. The Hopi Tribal Council, upon the recommendation of the Executive Committee, shall have the power, through majority vote, to dissolve the Fund. Such a recommendation by the Executive Committee shall be limited to situations in which the Executive Committee determines that such dissolution, because of imminent insolvency or other similar dilemmas, is in the best interests of the Fund and the Hopi Tribe.
- B. In the event of the dissolution of the Fund, no officer of the Fund, or any other private person shall be entitled to any distribution or division of its assets. Any assets remaining to the Fund at dissolution or liquidation shall be distributed as follows:
 - 1. All liabilities of the Fund shall be paid or adequate provision shall be made for payment;
 - 2. Assets held by the Fund upon a condition which occurs by reason of the dissolution shall be returned or otherwise conveyed in accordance with such requirements; and
 - 3. All remaining assets shall be distributed to one or more non-profit, charitable organizations which are tax exempt under the federal tax law then in effect, or to the Hopi Tribe if permissible under the federal tax law then in effect, to be used to carry on activities consistent with the purposes for which this Fund was organized. The specific recipients will be determined by written agreement between the Fund and the Hopi Tribe.

Section 105. Governing Structure.

- A. Members.
 - 1. The Fund shall be composed of not more than 30 Members. Membership in the Fund shall be available to all persons who actively seek to further the objectives of the Fund. Members of the Fund will be elected at the Annual Member Meeting for three-year terms with one-third of the terms staggered to expire each year unless it is

specified that a Member be elected to fill a vacancy. Members may also be elected at any regular meeting of the Executive Committee, or at any special meeting of the Executive Committee called for that purpose. Members shall be eligible for re-election to any number of successive terms.

2. Members will be expected to perform such assignments as the Executive Committee deems appropriate.
3. The Members shall hold an Annual Member Meeting at which the Members will be elected in accordance with Section 106(A)(1) above and any By-Laws created under the authority of this Ordinance. Any additional Member meetings shall be convened as deemed necessary or proper by the Members and/or the Executive Committee to carry out the purposes of the Fund. The Executive Committee shall be elected from the Members.
4. No person may be a Member of the Fund who, at the same time, is a Hopi Tribal Council Representative, except as allowed under §105(B)(6). If a Member becomes a Hopi Tribal Council Representative during the term of his/her office, he/she shall be immediately removed from the Membership and a replacement shall be elected as soon as practicable and in accordance with Section 106(A) above.
5. The Members of the Fund shall make reasonable efforts to ensure that the Membership of the Fund includes a reasonable number of members of the Hopi Tribe. The Membership of the Fund shall also make reasonable efforts to ensure that the Hopi Tribal members chosen for Membership in the Fund include representation from each of the Villages.
6. Any Member of the Fund who has, or whose immediate relatives have, a substantial interest in any decision, contract, sale, purchase or service to which the Fund is a party that member shall make known that interest to the Membership and shall refrain from voting upon or

otherwise participating in any manner in such a decision, contract, sale, or purchase.

B. Executive Committee.

1. An Executive Committee shall have all of the Powers of the Fund as listed in Section 103 above and shall manage the general affairs of the Fund.
2. The Executive Committee shall have the control and management of the property of the Fund including the fixing of compensation of its employees and the control of the funds in its care.
3. The Executive Committee shall act as the fiduciary of the Fund, which duty shall include be limited to the management of the Fund consistent with the purposes of this Ordinance and for the benefit of the Hopi Tribe.
4. The Executive Committee shall adopt, implement, and follow Bylaws for the Fund, not inconsistent with this Ordinance, by majority vote. The Bylaws shall proscribe the procedures by which the Executive Committee shall carry out its general affairs and duties. The Executive Committee may amend the Bylaws by majority vote.
5. The Executive Committee shall adopt, implement, and follow Investment Policies and Procedures for the Fund, not inconsistent with this Ordinance, by majority vote. The Investment Policies and Procedures shall proscribe, in general, the procedures by which the Executive Committee shall manage the assets of the Fund.
6. The Executive Committee shall have the power to sue on its own behalf, and when expressly authorized by majority vote of the Executive Committee, to consent to suit except that the scope of such consent shall be stated with specificity and limited to its express terms.
7. The Executive Committee shall consist of seven (7) persons who shall be Members of the Fund, elected by a majority of the Members voting at the Annual Member Meeting.

8. The Chairman of the Hopi Tribe shall serve as ex-officio of the Fund, but shall not have a vote in the conduct of the business of the Executive Committee and shall not be elected as an Officer of the Fund. The Hopi Tribal Council may choose up to two Tribal Council Representatives to serve as ex-officios of the Fund, but they shall not have a vote in the conduct of the business of the Executive Committee and shall not be elected as Officers of the Fund.
 9. The Executive Committee shall annually make a written report and presentation to the Tribal Council on the condition, management, and goals of the Fund. Subsequent to the annual report and presentation, the Tribal Council shall review the report and may offer suggestions to the Executive Committee regarding the condition, management, and goals of the Fund, which shall be duly considered by the Executive Committee.
 10. The accounts of the Fund shall be examined and audited annually by an independent auditor hired by the Executive Committee for that purpose, who shall prepare a written report of that examination and audit and, if satisfied that the Fund's accounts are accurate, shall sign a statement attesting to that fact as a part of the report. The annual audit report shall be delivered to the Hopi Tribal Council for their review.
- C. Officers, Employees, and Committees of the Fund.
1. At the first meeting of the Executive Committee following the Annual Meeting of the Members, the newly elected Executive Committee shall select from among the Executive Committee the Officers of the Fund: a President, a Vice President, a Secretary, and a Treasurer. The President of the Executive Committee shall be an enrolled member of the Hopi Tribe.
 2. The persons selected by the Executive Committee shall serve as Officers of the Fund for a term of one year or until their successors are selected and qualified, whichever is later. The President and Vice

Presidents shall serve no more than two terms consecutively. No person may hold more than one office simultaneously.

3. An Executive Director may be employed by the Executive Committee to serve at the will and pleasure of the Executive Committee. The duties of the Executive Director shall be defined at the time of appointment and shall be subject to change by the Executive Committee. The Executive Director shall be empowered to employ such others persons as the Executive Committee approves.
4. The Officers and Employees of the Fund shall carry on the ordinary and reasonable business of the Fund.

Section 106. Gifts, Contribution, and Donations.

- A. The Executive Committee shall adopt, implement, and follow policies and procedures to receive or decline gifts, contributions, and donations, including gifts-in-kind, to the Fund. All such income, not otherwise designated by the donor(s), shall be posted to the general fund of the Fund and shall be used in accordance with the purposes of the Fund as set out in Section 103 above.
- B. All restricted gifts, contributions, and donations, including gifts-in-kind, endowment funds, and trust funds shall be maintained in separate Fund accounts and used for the purposes specified by the donors. Disbursement of funds from these accounts will follow prescribed policies and procedures as adopted by the Executive Committee.
- C. Appropriate acknowledgement and official receipts will be made of all gifts, contributions, and donations, including gifts-in-kind, accepted at the Fund.

Section 107. Indemnification.

- A. Each Member and Employee of the Fund now or hereafter serving as such shall be indemnified by the Fund against any and all claims and liabilities to which he/she has or shall become subject by reason of serving or having served as such officer or by reason of any action alleged to have been taken,

omitted, or neglected by him/her as such officer; and the Fund shall reimburse each such person for all expenses including legal expenses, actually and reasonably incurred by him/her in connection with such claim or liability, provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with any claim or liability arising out of his/her own negligence, willful misconduct, and/or gross negligence, and contravention of any fiduciary duties assigned under this Ordinance.

Section 108. General; Miscellaneous.

- A. The affairs of the Fund and the conduct of its Members and Employees shall be subject to any laws, rules, or policies enacted or approved by the Hopi Tribe and intended for general application except for those whose terms necessarily conflict with the duties and responsibilities created under this Ordinance in which case, the duties and responsibilities created under this Ordinance shall govern, unless those laws, rules, or policies specifically state an intent to change, alter or otherwise affect those duties and responsibilities.
- B. Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of the Hopi Tribe, the Fund, or of the Members of the Fund acting in their capacity as Members of the Fund, except as specifically stated in Section 109(A) of this Ordinance or as otherwise agreed to by the Executive Committee pursuant to Section 105(B)(3).

Section 109. Jurisdiction.

- A. All donations to the Fund shall be deemed to take place on the Hopi Reservation, and the Executive Committee shall be liable to account only in the Hopi Tribal Courts. At any time, the Hopi Tribe, the Executive Committee, any Member of the Executive Committee, and/ or the Executive Director of the Fund may initiate actions or proceedings in the Hopi Tribal Court for the settlement of its accounts or for the determination of any question of construction of this Ordinance and the requirements hereunder

that may arise or for instructions by way of declaratory judgment. The Hopi Tribal Courts shall have exclusive jurisdiction over all proceedings initiated against the Fund. Proceedings that may be maintained under this section are limited exclusively to those concerning the investment and use of Fund assets.

- B. A Judicial proceeding under this Section shall not be construed to result in the continuing supervision by the Court over the administration of the Fund. The management and distribution of any part of the Fund, submission of accounts and reports to donors, payment of fees by the Fund and other obligations, acceptance of donations and any restrictions, and other aspects of the administration of the Fund shall proceed expeditiously, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.