

MENOMINEE TRIBE OF WISCONSIN: RESTORATION  
OF FEDERAL SUPERVISION [NEW]

§ 903. Definitions

For the purposes of sections 903 to 903f of this title—

- (1) The term "tribe" means the Menominee Indian Tribe of Wisconsin.
- (2) The term "Secretary" means the Secretary of the Interior.
- (3) The term "Menominee Restoration Committee" means that committee of nine Menominee Indians who shall be elected pursuant to subsections (a) and (b) of section 903b of this title.

Pub.L. 93-197, § 2, Dec. 22, 1973, 87 Stat. 770.

Short Title. Section 1 of Pub.L. 93-197 provided: "That this Act [which enacted sections 903 to 903f of this title and repealed sections 801 to 902 of this title] may be cited as the 'Menominee Restoration Act'."

Library References  
Indians § 2.  
C.J.S. Indians § 9 et seq.

§ 903a. Federal recognition—Extension; laws applicable

(a) Notwithstanding the provisions of the Act of June 17, 1954, as amended, or any other law, Federal recognition is hereby extended to the Menominee Indian Tribe of Wisconsin and the provisions of the Act of June 18, 1934, as amended, are made applicable to it.

Repeal of provisions terminating Federal supervision;  
reinstatement of tribal rights and privileges

(b) The Act of June 17, 1954, as amended, is hereby repealed and there are hereby reinstated all rights and privileges of the tribe or its members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to such Act.

Continuation of tribal rights and privileges

(c) Nothing contained in sections 903 to 903f of this title shall diminish any rights or privileges enjoyed by the tribe or its members now or prior to June 17, 1954, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of sections 903 to 903f of this title.

Continuation of property or contractual rights or  
obligations and tax obligations

(d) Except as specifically provided in sections 903 to 903f of this title, nothing contained in sections 903 to 903f of this title shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligations for taxes already levied.

Grants for services entitled to upon Federal recognition; terms and  
conditions; power of Menominee Restoration Committee

(e) In providing to the tribe such services to which it may be entitled upon its recognition pursuant to subsection (a) of this section, the Secretary of the Interior and the Secretary of Health, Education, and Welfare, as appropriate, are authorized from funds appropriated pursuant to section 13 of this title, sections 2001 to 2004a of Title 42, or any other Act authorizing appropriations for the administration of Indian affairs, upon the request of the tribe and subject to such terms and conditions as may be mutually agreed to, to make grants and contract to make grants which will accomplish the general purposes for which the funds were appropriated. The Menominee Restoration Committee shall have full authority and capacity to be a party to receive such grants to make such contracts, and to bind the tribal governing body as the successor in interest to the Menominee Restoration Committee: *Provided, however,* That the Menominee Restoration Committee shall have no authority to bind the tribe for

a period of more than six months after the date on which the tribal governing body takes office.

Pub.L. 93-197, § 3, Dec. 22, 1973, 87 Stat. 770.

References in Text. The Act of June 17, 1954, referred to in subsecs. (a) and (b), is Act June 17, 1954, c. 303, 68 Stat. 250, which was formerly classified to sections 891 to 902 of this title prior to its repeal by subsec. (b) of this section. The Act of June 18, 1934, referred to in subsec. (a), is Act June 18, 1934, c. 576, 48 Stat. 981, and is classified to section 401 et seq. of this title.

Change of Name. The Department of Health, Education and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare was redesignated the Secretary or official, as appropriate, of Health and Human Services, with any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare, or any official of the Department of Health, Education, and Welfare, in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of Pub.L. 90-88, as prescribed by section 601 of Pub.L. 90-88, Title VI, Oct. 17, 1973, 87 Stat. 606, set out as a note under section 301 of Title 20, Education, deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under Pub.L. 90-88, Title III, §§ 301-307, Oct. 17,

1970, 93 Stat. 677-681. See section 3441 to 3447 and 3508 of Title 20.

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1. Jurisdiction
  - Under circumstances of case, including fact that no tribal court was available to adjudicate plaintiffs' claims under this subchapter, federal district court has jurisdiction. *Sturdevant v. Wilber*, D.C. Wis.1978, 456 F.Supp. 428.
  - Wisconsin court had jurisdiction over crime committed by Menominee Indian on reservation on November 7, 1975. *State v. LaTender*, 1970, 273 N.W.2d 280, 88 Wis.2d 410.
2. Obligations for taxes already levied
  - Although the reintroduction of federal preemption through regulatory control and the right of tribal self-government prevented the imposition of state income taxes on the Menominees after Dec. 22, 1973 with the enactment of this section, the state was not prevented from collecting taxes accruing to that date despite claim that the word "levy" appearing in this section giving state right to collect "obligations for taxes already levied" referred to actual collection of tax. *Wagner v. Wisconsin Dept. of Revenue*, 1981, 300 N.W.2d 701, 102 Wis.2d 332.

§ 903b. Menominee Restoration Committee—Nomination and election of members; time and procedure; ballot requirements; approval by Secretary; powers of Committee

(a) Within fifteen days after December 22, 1973, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Menominee Restoration Committee. Such general council meeting shall be held within thirty days of December 22, 1973. Within forty-five days of the general council meeting provided for herein, the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect the membership of the Menominee Restoration Committee from among the nominees submitted to him from the general council meeting provided for herein. The ballots shall provide for write-in votes. The Secretary shall approve the Menominee Restoration Committee elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. The Menominee Restoration Committee shall represent the Menominee people in the implementation of sections 903 to 903f of this title and shall have no powers other than those given to it in accordance with sections 903 to 903f of this title. The Menominee Restoration Committee shall have no power or authority under sections 903 to 903f of this title after the time which the duly-elected tribal governing body takes office: *Provided, however*, That this provision shall in no way invalidate or affect grants or contracts made pursuant to the provisions of section 903a(e) of this title.

Eligible voters; notice by Secretary of nominating meeting and election

(b) In the absence of a completed tribal roll prepared pursuant to subsection (c) of this section and solely for the purposes of the general council meeting and the election provided for in subsection (a) of this section, all living persons on the final roll of the tribe published under

section 893 of this title, and all descendants, who are at least eighteen years of age and who possess at least one-quarter degree of Menominee Indian blood, of persons on such roll shall be entitled to attend, participate, and vote at such general council meeting and such election. Verification of descendancy, age, and blood quantum shall be made upon oath before the Secretary or his authorized representative and his determination thereon shall be conclusive and final. The Secretary shall assure that adequate notice of such meeting and election shall be provided eligible voters.

**Membership roll; opening; revision procedure; prerequisites for inclusion; possession and maintenance of enrollment records and materials; appeal; finality of determination**

(c) The membership roll of the tribe which was closed as of June 17, 1954, is hereby declared open. The Secretary, under contract with the Menominee Restoration Committee, shall proceed to make current the roll in accordance with the terms of sections 903 to 903f of this title. The names of all enrollees who are deceased as of December 22, 1973, shall be stricken. The names of any descendants of an enrollee shall be added to the roll provided such descendant possesses at least one-quarter degree Menominee Indian blood. Upon installation of elected constitutional officers of the tribe, the Secretary and the Menominee Restoration Committee shall deliver their records, files, and any other material relating to enrollment matters to the tribal governing body. All further work in bringing and maintaining current the tribal roll shall be performed in such manner as may be prescribed in accordance with the tribal governing documents. Until responsibility for the tribal roll is assumed by the tribal governing body, appeals from the omission or inclusion of any name upon the tribal roll shall lie with the Secretary and his determination thereon shall be final. The Secretary shall make the final determination of each such appeal within ninety days after an appeal is initiated.

Pub.L. 93-197, § 4, Dec. 22, 1973, 87 Stat. 771.

**References in Text.** Section 893 of this title, referred to in subsec. (b), was repealed by section 3(b) of Pub.L. 93-197, which is classified as section 903a(b) of this title.

**Library References**

Indians → 4.

C.J.S. Indians § 9, 74.

1. Sovereign Immunity

Action under this subchapter against members of Menominee Restoration Com-

mittee was not barred by doctrine of sovereign immunity in view of allegations that defendants acted beyond their statutory authorization and of provision of subsec. (a) of this section that Committee should have no powers other than those given to it in accordance with this subchapter. *Sturdevant v. Wilber*, D.C.Wis. 1978, 456 F.Supp. 428.

**§ 903c. Tribal constitution and bylaws—Election; time and procedure**

(a) Upon request from the Menominee Restoration Committee, the Secretary shall conduct an election by secret ballot, pursuant to the provisions of the Act of June 18, 1934, as amended, for the purpose of determining the tribe's constitution and bylaws. The election shall be held within sixty days after final certification of the tribal roll.

**Distribution by Menominee Restoration Committee prior to election of proposed constitution and bylaws and brief impartial description; consultations by Committee with persons entitled to vote**

(b) The Menominee Restoration Committee shall distribute to all enrolled persons who are entitled to vote in the election, at least thirty days before the election, a copy of the constitution and bylaws as drafted by the Menominee Restoration Committee which will be presented at the election, along with a brief impartial description of the constitution and bylaws. The Menominee Restoration Committee shall freely consult with persons entitled to vote in the election concerning the text and description of the constitution and bylaws. Such consultation shall not be carried on within fifty feet of the polling places on the date of the election.

Election of tribal officers provided for in constitution and bylaws; time and procedure for initial election; subsequent elections governed by constitution, bylaws and ordinances

(c) Within one hundred and twenty days after the tribe adopts a constitution and bylaws, the Menominee Restoration Committee shall conduct an election by secret ballot for the purpose of determining the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this initial election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted and all tribal members who are eighteen years of age or over shall be entitled to vote in the election. All further elections of tribal officers shall be as provided in the tribal constitution and bylaws and ordinances adopted thereunder.

Majority vote necessary for passage and initial election of tribal governing body; minimum number of voters required to vote

(d) In any election held pursuant to this section, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate the adoption of a tribal constitution and bylaws and the initial election of the tribe's governing body, so long as, in each such election, the total vote cast is at least 30 per centum of those entitled to vote.

Revision of time periods pursuant to agreement of Secretary and Menominee Restoration Committee

(e) The time periods set forth in section 903b(c) of this title and subsections (a) and (c) of this section may be changed by the written agreement of the Secretary and the Menominee Restoration Committee. Pub.L. 93-197, § 5, Dec. 22, 1973, 87 Stat. 772.

References in Text. The Act of June 18, 1934, referred to in subsec. (a), is Act June 18, 1934, c. 576, 48 Stat. 984, and is classified to section 461 et seq. of this title.

Library References  
Indians § 39.  
C.J.S. Indians § 60 et seq.

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1. Authority of Committee  
Menominee Restoration Committee had no authority to enter into agreements with any entities other than the Departments of the Interior and Health, Education and Welfare. *Sturdevant v. Wilber*, D.C.Wis.1979, 404 F.Supp. 327.

2. Power of court  
In action brought by members of the Menominee Indian Tribe against members of the Menominee Restoration Committee, district court was not precluded from considering question as to whether defendants had acted beyond the scope of their statutory authority by entering into certain contracts on ground that parties to such contracts, other than the Committee, had not been joined in the action, since purpose of plaintiffs' action was not to determine the rights of parties to contracts in question but to challenge defendants' authority to enter into such contracts. *Sturdevant v. Wilber*, D.C.Wis.1979, 404 F.Supp. 327.

3. Standing to sue  
Members of Menominee Indian Tribe had standing to challenge the statutory authority of members of the Menominee Restoration Committee to enter into con-

tract with parties other than the Secretaries of the Interior and of Health, Education and Welfare, since members of Menominee Indian Tribe were seeking to protect an interest within zone of interests protected by subchapter, and they alleged injury in fact as a result of defendants' entry into contracts in question. *Sturdevant v. Wilber*, D.C.Wis.1979, 404 F.Supp. 327.

4. Discovery orders  
In absence of express statutory mandate, district court would not enter a prospective order requiring members of the Menominee Restoration Committee to release certain tribal documents, since it was speculative whether such documents existed and whether Menominee Restoration Committee would withhold such documents in the future. *Sturdevant v. Wilber*, D.C.Wis.1979, 404 F.Supp. 327.

Where complaint filed by members of Menominee Indian Tribe alleged that defendant members of Menominee Restoration Committee had taken actions unauthorized and beyond the scope of their duties under this chapter, and much of plaintiffs' discovery required defendants to disclose contracts which Committee had made during its existence, defendants had ample notice that their authority to enter into certain contracts was an issue in the case and they would not be unfairly prejudiced by district court's consideration of that issue. *Id.*

5. Summary Judgment  
In action brought against members of the Menominee Restoration Committee for failure to fulfill certain duties required of them by subchapter, substantial fact issue existed as to whether defendants had fulfilled their statutory duties to conduct tribal elections, precluding summary judgment as to that issue. *Sturdevant v. Wilber*, D.C.Wis.1979, 404 F.Supp. 327.

§ 903d. Transfer of assets of Menominee Enterprises, Inc.—Negotiation and development of plan for assumption of assets; submittal of plan to Congress

(a) The Secretary shall negotiate with the elected members of the Menominee Common Stock and Voting Trust and the Board of Directors of Menominee Enterprises, Incorporated, or their authorized representatives, to develop a plan for the assumption of the assets of the corporation. The Secretary shall submit such plan to the Congress within one year from December 22, 1973.

Acceptance of assets by Secretary; prerequisites; preexisting rights and obligations in assets; United States as trustee for land transferred; exemption from taxation for transfer of assets and assets transferred

(b) If neither House of Congress shall have passed a resolution of disapproval of the plan within sixty days of the date the plan is submitted to Congress, the Secretary shall, subject to the terms and conditions of the plan negotiated pursuant to subsection (a) of this section, accept the assets (excluding any real property not located in or adjacent to the territory, constituting, on the effective date of sections 903 to 903f of this title, the county of Menominee, Wisconsin) of Menominee Enterprises, Incorporated, but only if transferred to him by the Board of Directors of Menominee Enterprises, Incorporated, subject to the approval of the shareholders as required by the laws of Wisconsin. Such assets shall be subject to all valid existing rights, including, but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, outstanding corporate indebtedness of all types, and any other obligation. The land and other assets transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Wisconsin. Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the tribe and shall be their reservation. The transfer of assets authorized by this section shall be exempt from all local, State, and Federal taxation. All assets transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

Transfer to Secretary of real property of Menominee Tribe members; necessity for transfer by Menominee owner or owners; preexisting rights and obligations in land; United States as trustee for land transferred; exemption from taxation for transfer of assets and assets transferred

(c) The Secretary shall accept the real property (excluding any real property not located in or adjacent to the territory constituting, on December 22, 1973, the county of Menominee, Wisconsin) of members of the Menominee Tribe, but only if transferred to him by the Menominee owner or owners. Such property shall be subject to all valid existing rights, including, but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, and any other obligations. The land transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Wisconsin. Subject to the conditions imposed by this subsection, the land transferred shall be taken in the name of the United States in trust for the Menominee Tribe of Wisconsin and shall be part of their reservation. The transfer of assets authorized by this section shall be exempt from all local, State, and Federal taxation. All assets transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

Consultation by Secretary and Menominee Restoration Committee with appropriate State and local government officials for non-impairment of necessary governmental services upon transfer of assets

(d) The Secretary and the Menominee Restoration Committee shall consult with appropriate State and local government officials to assure that the provision of necessary governmental services is not impaired as a result of the transfer of assets provided for in this section.

Establishment of local government bodies, etc., by Wisconsin to provide  
necessary governmental services in Menominee County

(e) For the purpose of implementing subsection (d) of this section, the State of Wisconsin may establish such local government bodies, political subdivisions, and service arrangements as will best provide the State or local government services required by the people in the territory constituting, on December 22, 1973, the county of Menominee.

Pub.L. 93-197, § 6, Dec. 22, 1973, 87 Stat. 772.

Library References

Indians § 10.

C.J.S. Indians §§ 19, 28 et seq.

§ 903e. Rules and regulations

The Secretary is hereby authorized to make such rules and regulations as are necessary to carry out the provisions of sections 903 to 903f of this title.

Pub.L. 93-197, § 7, Dec. 22, 1973, 87 Stat. 773.

§ 903f. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 903 to 903f of this title.

Pub.L. 93-197, § 8, Dec. 22, 1973, 87 Stat. 773.