

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 3, 2003	No. I03-007 (R03-028) Re: Tribal member eligibility to serve on Commission on Appellate Court Appointments
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TO: The Honorable James Weiers
Arizona State Senate

Question Presented

You have asked whether a Navajo tribal member may serve as a member of the Commission on Appellate Court Appointments ("Commission").

Summary Answer

A Navajo tribal member may serve as a member of the Commission, provided that he or she otherwise meets the requirements for membership on the Commission.¹

Background

In 1974, Arizona voters amended the State Constitution to create a "merit selection and retention" system for selecting appellate and superior court judges in certain counties. Ariz. Const. art. VI, §§ 36, 37, 41. Under merit selection, the Governor appoints superior court judges in

¹Although you asked specifically about Navajo tribal members, this analysis would apply to any Native American. It also applies regardless of whether the person resides on a reservation or elsewhere within Arizona.

Maricopa and Pima counties and appellate court judges from a list of nominees submitted by a commission.² Ariz. Const. art. VI, § 36 (commission on appellate court appointments), § 41 (commission on trial court appointments). There are three judicial nominating commissions in Arizona — the Commission on Appellate Court Appointments, the Maricopa County Commission on Trial Court Appointments, and the Pima County Commission on Trial Court Appointments. *See* Merit Selection in Arizona <http://www.supreme.state.az.us/hrl/meritpage.htm>. Each commission has sixteen members: ten non-attorney members, five attorney members, and the Chief Justice of the Arizona Supreme Court, who serves as a voting chairperson. The commissions' members are appointed by the Governor and confirmed by the Senate.

All members of the Commission on Appellate Court Appointments are required to have resided in the state for not less than five years and may not hold any governmental office, elective or appointive, for profit. Ariz. Const. art. VI, § 36. In addition, non-attorney members may not be judges, retired judges or admitted to practice before the supreme court. *Id.* In making appointments to the Commission, "the Governor, the senate and the state bar shall endeavor to see that the commission reflects the diversity of Arizona's population." *Id.* at (C).

Analysis

The Arizona Constitution establishes that any person who has resided in Arizona for at least five years and meets other specified requirements is eligible to serve on the Commission. *See* Ariz. Const. art. VI, § 41. The fact that a person is a tribal member does not disqualify him or her from serving as a Commissioner. Tribal members born in the United States are citizens of the United States and of the State in which they reside. *See Goodluck v. Apache County*, 417 F. Supp. 13, 14-

²The Constitution requires merit selection of superior court judges in counties with populations of 250,000 or more. Ariz. Const. art. VI, §§ 37(A), 41(I).

15 (D. Ariz.1975), *aff'd.*, 429 U.S. 876 (1976). As state citizens, Native Americans have the right to vote in state elections, hold state public offices, receive state-supported benefits, and attend state-supported public schools. *See Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 467 (1976); *Rincon Band of Mission Indians v. County of San Diego*, 324 F. Supp. 371, 375 n. 4 (S.D. Cal. 1971); *Harrison v. Laveen*, 67 Ariz. 337, 341, 196 P.2d 456, 458 (1948) (Native Americans are "residents of the state" and therefore qualified to vote), overruling *Porter v. Hall*, 34 Ariz. 308, 271 P. 411 (1928). Moreover, the Arizona Constitution encourages Commission membership "to reflect the diversity of the population of Arizona." Ariz. Const. art. VI, §§ 36(C), 41(D). Native American membership on the Commission on Appellate Court Commissions furthers this goal.³

Conclusion

Native Americans who meet the requirements for membership set forth in Article VI, Section 36 of the Arizona Constitution are eligible to serve on the Commission on Appellate Court Appointments.

Terry Goddard
Attorney General

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³Your opinion request questions the ability of a member of a sovereign nation to participate "in the selection process of judges to courts that this individual may not be subject to as a result of his tribe's status." Although a comprehensive discussion of state court jurisdiction and tribal sovereignty is beyond the scope of this opinion, there are many circumstances in which state courts have jurisdiction over issues involving tribal members. *See Felix S. Cohen, Handbook of Federal Indian Law* § 3 at 119 n. 34 (1983).