Legislative History: Ordinance No. 03-89, "Ordinance Defining the Powers, Duties, and Authority of the Office of Independent Counsel," was ordained and the Nation's chairman's previous veto was overridden by Resolution No. 305-89 on September 19, 1989. (Resolution No. 305-89 (overriding veto) passed by a two-thirds majority but was not signed by the Chairman of the Nation.)
ORDINANCE DEFINING THE POWERS, DUTIES, AND AUTHORITY
OF THE OFFICE OF INDEPENDENT COUNSEL

ORDINANCE NO. 03-89

WHEREAS, the Legislative Council has by Resolution No. 169-89
established the Office of Independent Counsel; and

WHEREAS, the scope of prosecutorial jurisdiction must be adequate
to assure full investigative and prosecutorial authority
with respect to any matter which the Legislative Council
may refer to the Office of Independent Counsel; and

WHEREAS, the prosecutorial jurisdiction of Independent Counsel
shall include authority to investigate and prosecute all
crimes that may be referred to the Office of Independent
Counsel by the Legislative Council for investigation or
prosecution in accordance with the provisions of this
ordinance, including perjury, obstruction of justice,
imimidation of witnesses, abuse of office and such
other crimes contained in the laws or ordinances of the
Tohono O'Odham Nation.

NOW, THEREFORE, BE IT ORDAINED by the Tohono O'Odham Legislative
Council that:

A. The authority and duties of the Independent Counsel,
notwithstanding any other provision of law, shall
include:

(1) power to exercise all investigative and
prosecutorial functions;
(2) authority to participate in court proceedings and
engage litigation, including civil and criminal
matters;
(3) unless otherwise directed by the Legislative
Council, authority to appeal any decision of a
court in any case or proceeding in which such
Independent Counsel participates in an official
capacity;
(4) power to review all documentary evidence
available from any source;
(5) authority to contest the assertion of any
testimonial privilege;
(6) authority to make application to any appropriate
court for a grant of immunity to any witness,
consistent with applicable statutory
requirements, or for warrants, subpoenas or other
court orders;
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(7) power to initiate and conduct prosecutions in a
court of competent jurisdiction, issuing and
signing complaints, and handling all aspects
of any case, in the name of the Tohono O'odham
Nation;

(8) authority to report to, and to consult and
cooperate with the prosecuting attorney of the
Tohono O'odham Nation and the prosecuting
attorneys of other jurisdictions, including the
United States Attorney, concerning any possible
violations of law which may be revealed by the
investigation with respect to which Independent
Counsel is appointed, including violations of law
which may not directly relate to the purpose of
the investigation.

B. Payment of Costs for Office

All costs relating to the establishment and
operation of the Office of Independent Counsel shall
be paid from funds appropriated by the Legislative
Council and pursuant to a budget for the Office of
Independent Counsel adopted by the Legislative
Council at the time it certifies to the Chief Judge,
or Senior Judge, of the Tohono O'odham Courts that
it has reason to believe a law of the Nation has
been violated and that an Independent Counsel should
be appointed in accordance with the provisions of
paragraph E.

C. Additional Staff

The Independent Counsel may appoint, fix the
compensation and assign the duties of such other
employees as such Independent Counsel considers
necessary, including investigators, attorneys or
consultants, subject to any limitations set in the
Special Counsel contract and in the budget of the
Office of Independent Counsel.

D. Independence of Office

The office of Independent Counsel and the person(s)
appointed by him shall be separate and independent
of any other similar prosecution agency.

E. Appointment. Qualifications of and Contracting for
Independent Counsel

(1) Whenever the Legislative Council has reason to
believe that any present or former elected or
appointed public official or judge of the
Nation has violated any law of the Nation while
purporting to perform the duties of office, it
shall so certify the matter in writing,
including the basis therefore and the nature of
the alleged offense, to the Chief Judge of the
Tohono O'odham Courts (unless the Chief Judge
is the object of the accusation, or is
involved in the matters from which the
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accusation arises, in which case the certification shall be to the Judge of the Tohono O'Odham Courts with the most seniority other than the Chief Judge. Upon receipt of such certification, the Chief Judge (or the Senior Judge, if applicable) shall designate a Special Committee consisting of one Associate Judge of the Tohono O'Odham Courts, one member of the Legislative Council and the head of one of the executive departments of the Nation, none of whom shall have any connection with or involvement in the matters from which the accusation arises, which Committee shall select and appoint an Independent Counsel under the provisions of this Ordinance.

(2) The Independent Counsel shall be an attorney or firm knowledgeable of Indian law who has demonstrated experience to conduct investigations and prosecutions in a prompt, responsible and cost-effective manner.

(3) Upon its selection of the Independent Prosecutor, the Committee shall negotiate a Special Counsel contract with the attorney or firm selected, which contract shall set out in detail the scope of the Independent Prosecutor's jurisdiction and budget. The contract negotiated between the Special Committee and the Independent Counsel shall be executed on behalf of the Nation by the members of the Special Committee, any two of them, and shall be submitted to the Bureau of Indian Affairs for approval. No other approval by the Nation shall be required to make the contract a valid, binding contract with the Nation.

(4) The Special Counsel Contract shall be subject to and shall incorporate by reference all of the terms and provisions of this ordinance and of the budget established for the Office of Independent Counsel by the Legislative Council, and the Independent Counsel shall be bound thereby in the execution of his duties.

F. Custody of Records

Upon the termination of the office of Independent Counsel, all records and documents which have been received and created shall be transferred to and become a record of the Tohono O'Odham Courts.

G. Legislative Oversight

(1) The appropriate committee of the Legislative Council shall have the legislative oversight over the Office of Independent Counsel.

(2) The Independent Counsel shall submit to the Legislative Council such statements or reports on the activities of the Office of Independent Counsel as may be provided for in his Special Counsel contract.
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H. Removal of an Independent Counsel

An Independent Counsel appointed pursuant hereto may be removed from office only by action of the Legislative Council upon the recommendation of the appropriate committee of the Legislative Council having legislative oversight over the Office of Independent Counsel and a finding of good cause, physical disability, mental incapacity or any other condition that substantially impairs the performance of duties.

I. Termination of Office

The Office of Independent Counsel shall terminate when the investigation of all matters within the prosecutorial jurisdiction of such Independent Counsel, and any resulting prosecutions, have been completed or substantially completed, at which time the Independent Counsel shall file a final report with the Legislative Council.

The foregoing Ordinance was passed by the Tohono O'odham Council on the 14th day of August, 1982 at a meeting at which a quorum was present with a vote of 734.0 for; 555.0 against; 435.0 not voting; and 92 absent, pursuant to the powers vested in the Council by Sections 1 (c)(6) and 1 (d) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986, and approved by the Acting Deputy Assistant Secretary -Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Edward D. Manuel, Legislative Chairman
14th day of September, 1982.

ATTEST:

Teresa M. Cheyuga, Legislative Secretary
10th day of September, 1982.

Said Ordinance was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 14th day of September, 1982 at 7:15 p.m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.
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TOHONO O'ODHAM LEGISLATIVE COUNCIL
Edward D. Manuel, Legislative Chairman

[ ] APPROVED ) on the 16th day of Sept., 1989,
[ ] DISAPPROVED ) at 2:25 o'clock, P.M.

ANGELO J. JOAQUIN, Sr. Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 28th day of
Sept., 1989, at 4:55 o'clock, P.M.

Teresa M. Choyguha,
Legislative Secretary
RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Override Veto of Ordinance No. 03-89 "Defining the
Powers, Duties, and Authority of the Office of
Independent Counsel")

RES. NO. 305-89

WHEREAS, the Tohono O'Odham Legislative Council did by Ordinance
No. 03-89 define the Powers, Duties, and Authority of
the Office of Independent Counsel; and

WHEREAS, upon presentation of Ordinance No. 03-89 to the Chairman
of the Tohono O'Odham Nation he did disapprove thereof
and returning it to the Council with his objections in
accordance with the provisions of Article VII, Section 5
of the Constitution of the Tohono O'Odham Nation; and

WHEREAS, the Tohono O’Odham Legislative Council has reviewed the
Chairman’s objections and after consideration again
voted to pass Ordinance No. 03-89.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O’Odham
Legislative Council does hereby override the Chairman’s
veto of Ordinance No. 03-89, by a vote of two-thirds
(2/3) of the votes cast 1,066.0.

The foregoing resolution was presented to the Tohono O’Odham
Legislative Council on the 18th. day of September, 1989, at a
meeting at which a quorum was present and, by a vote of 1,126.0
for: 473.0 against: 125.0 not voting; and 01. absent, was
passed by a majority of at least two-thirds (2/3) of the votes
cast and became law as provided in Section 5 of Article VII of
the Constitution of the Tohono O’Odham Nation.

TOHONO O’ODHAM LEGISLATIVE COUNCIL

Edward D. Manuel, Legislative-Chairman

ATTEST:

Teresa M. Choyguha, Legislative Secretary

Signed this ______ day of __________, 19___.

Angelo J. Joaquin, Sr., Chairman
TOHONO O’ODHAM NATION