

MENOMINEE TRIBE OF WISCONSIN: RESTORATION OF FEDERAL SUPERVISION

§ 903. Definitions

For the purposes of this Act—

- (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 4(a) and 4(b) of this Act [25 USCS § 903b(a), (b)].
- (Dec. 22, 1973, P.L. 93-197, § 2, 87 Stat. 770.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Reference in text:

“This Act”, referred to in this section, is Dec. 22, 1973, P.L. 93-197, § 2, 87 Stat. 770, which appears generally as 25 USCS §§ 903 et seq. For full classification of this Act, consult USCS Tables volumes.

Short titles:

Act Dec. 22, 1973, P. L. 93-197, § 1,87 Stat. 770, provided: “This Act may be cited as the “Menominee Restoration Act”. For full classification of this Act, consult USCS Tables volumes.

RESEARCH GUIDE

Law Review Articles:

Washburn, The Historical Context of American Indian Legal Problems. 40 Law & Contemp Prob 12.

§ 903a. Federal recognition

- (a) Extension; laws applicable.** Notwithstanding the provisions of the Act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891-902), 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 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended, are made applicable to it.
- (b) Repeal of provisions terminating Federal supervision; reinstatement of tribal rights and privileges.** The act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891-902), as amended, is hereby repealed and there are hereby reinstated all rights and privileges of the tribe or its members under Federal treaty, statute, or otherwise which may have been lost pursuant to such Act.
- (c) Continuation of tribal rights and privileges.** Nothing contained in this Act 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 this Act.

- (d) **Continuation of property or contractual rights or obligations and tax obligations.** Except as specifically provided in this Act, nothing contained in this Act shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligations for taxes already levied.
- (e) **Grants for services entitled to upon Federal recognition; terms and conditions; power of Menominee Restoration Committee.** In providing 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 [Secretary of Health and Human Services], as appropriate, are authorized from funds appropriated pursuant to the Act of November 2, 1921 (42 Stat 208; 25 U.S.C. 13) [25 USCS § 13], the Act of August 5, 1954 (68 Stat. 674), as amended, 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 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.

(Dec. 22, 1973, P. L. 93-197, § 3, 87 Stat. 770.)

HISTORY; ANCILLARY LAW AND DIRECTIVES

Reference in text:

"The Act of June 17, 1954 (68 Stat. 250; U.S.C. 891-902), as amended" or "such Act", referred to in this section is Act June 17, 1954, ch 303, 68 Stat. 250, which formerly appeared as 25 USCS §§ 891 et seq. and which was repealed by subsec. (b) of this section.

"The Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended", referred to in this action, is Act June 18, 1934, ch 576, 48 Stat. 984, which appears generally as 25 USCS §§ 461 et seq. For full classification of this Act, consult USCS Tables volumes.

"This Act", referred to in this section, is Act Dec. 22, 1973, P.L. 93-197, 87 Stat. 770, which appears generally as 25 USCS §§ 903 et seq. For full classification of this Act, consult USCS Tables volumes.

"The Act of August 5, 1954, (68 Stat. 674), as amended", referred to in this section, is Act. Aug. 5, 1954, ch 658, 68 Stat. 674, which appears

generally as 42 USCS §§ 2001 et seq. For full classification of this Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed words "Secretary of Health and Human Services" are inserted on authority of Act Oct. 17, 1979, P. L. 96-88, Title V. § 509, 93 Stat. 695, which appears as 20 USCS § 3508, which redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of such Act on Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under such Act Oct. 17, 1979.

CROSS REFERENCES:

This section is referred to in 25 USCS § 903b.

RESEARCH GUIDE

Law Review Articles:

Indian Stronghold and the Spread of Urban America. 10 Ariz L Rev 706.
Indian Battle of self-Determination. 58 Calif L Rev 445.
Indian Hunting and Fishing Rites. 37 Geo Wash L Rev 1251.
Indian Hunting, Fishing and Trapping Rights: the Record and the Controversy. 7 Idaho L Rev 49.

INTERPRETIVE NOTES AND DECISIONS

Congress, when it decided to restore Menominee' tribal status by enacting Menominee Restoration Act (25 USCS §§ 903-903f) did not also decide to terminate state jurisdiction over crimes by or against Indian committed on reservation; 18 USCS § 1162 continued to give State of Wisconsin jurisdiction over crimes committed by or against Indians on Menominee Reservation until Wisconsin retroceded that jurisdiction to United States pursuant to 25 USCS § 1323. Latender v Israel (1978, CA7 Wis) 584 F2d 817, cert den 440 US 985, 60 L Ed 2d 247, 99 S Ct 1800.

25 USCS §903a(b) did not affect earlier transfer under 18 USCS § 1162, to Wisconsin of jurisdiction over conduct occurring on Menominee reservation. Application of Nacotee (1975, ED Wis) 389 F Supp 784, remanded without op (CA7 Wis) 525 F2d 694.

Federal district court had jurisdiction to hear case asking for declaratory and injunctive relief under the Menominee Restoration Act (25 USCS §§ 903-903f) since: tribal sovereignty was not threatened in case at bar; there was evidence in the record that no tribal court was available to adjudicate plaintiff's claim in case at

bar; case at bar did not involve questions of tribal tradition and custom but rather involved questions turning on duties and authority created by Congress in the Menominee Restoration Act; therefore, class action against Menominee Restoration Committee which allegedly acting in excess of statutory authority could be maintained. Sturdevant v Wilber (1978, ED Wis) 456 F Supp 428.

State of Wisconsin had full jurisdiction to prosecute a member of the Menominee Tribe under the provisions of the transitional period in the Menominee Restoration Act (25 USCS §§ 903 et seq.). State ex rel. Pyatskowit v Montour (1976) 72 Wis 2d 277, 240 NW2d 186.

Retrocession of jurisdiction of state of Wisconsin over crimes committed by Menominee Indians on reservation was accomplished on March 1, 1976, and thereafter, jurisdiction over crimes committed by Menominee Indians on reservation vested in federal and tribal governments; where crime charged occurred on November 1, 1975, state courts had jurisdiction. State v. La Tender (1979, Wis) 273 NW2d 260.

§903b. Menominee Restoration Committee

(a) Nomination and election of members; time and procedure; ballot requirements; approval by Secretary; powers of Committee. Within fifteen days after the enactment of this Act [enacted Dec. 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 the enactment of this Act [enacted Dec. 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 this Act and shall have no powers other than those given to it in accordance with this Act. The Menominee Restoration Committee shall have no power or authority under this Act 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 subsection 3(e) of this Act [25 USCS § 903a(e)].

(b) Eligible voters; notice by Secretary of nominating meeting and election. In the absence of a completed tribal roll prepared pursuant to subsection (c) hereof and solely for the purposes of the general council meeting and the election provided for in subsection (a) hereof, all living persons on the final roll of the tribe, published under section 3 of the Act of June 17, 1954 (25 U.S.C. 893), 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 of 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.

(c) Membership roll; opening; revision procedure; prerequisites for inclusion; possession and maintenance of enrollment records and materials; appeal; finality of determination. 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 this Act §§ 903-903f]. The names of all enrollees who are deceased as of the date of enactment of this Act [enacted Dec. 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 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. (Dec. 22, 1973, P.L. 93-197, § 4, 87 Stat. 771.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Reference in text:

"This act" referred to in this section, is Act Dec. 22, 1973, P.L. 93-197, 87 Stat. 770, which appears generally as 25 USCS §§ 903 et seq. For full classification of this Act, consult USCS Tables volumes.

"Section 3 of the Act of June 7, 1954 (25 U.S.C. 893)", referred to in this section, is § 3 of Act June 17, 1954, ch 303, 68 Stat. 250, which formerly appeared as 25 USCS § 893 prior to repeal by Act. Dec. 22, 1973, P.L. 93-197, § 3(b), 87 Stat. 770.

CROSS REFERENCES

This section is referred to in 25 USCS § 903c.

INTERPRETIVE NOTES AND DECISIONS

Powers of Menominee Restoration Committee are strictly limited by terms of Menominee Restoration Act (24 USCS §§ 903 et seq.); Committee has no power or authority under Act after duly-elected tribal governing body takes office, and although it has power to contract with or receive grants

from 2 specifically-named federal departments, and even as to such contract and grants, Committee has no authority to bind tribe for period of more than 6 months after date on which tribal governing body takes office. Sturdevant v Wilber (1979, ED Wis) 464 F Supp 327.

§903c. Tribal constitution and bylaws

(a) Election; time and procedure. 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.

(b) 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. 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.

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

(d) Majority vote necessary for passage and initial election of tribal governing body; minimum number of voters required to vote. 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 case is at least 30 per centum of those entitled to vote.

(e) Revision of time periods pursuant to agreement of Secretary and Menominee Restoration Committee. The time periods set forth in subsections 4(c), 5(a), and 5(c) [25 USCS § 903b(c), and subsecs. (a) and (c) of this section] may be changed by the written agreement of the Secretary and the Menominee Restoration Committee.

(Dec. 22, 1973, P.L. 93-197, § 5, 87 Stat. 772.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The act of June 18, 1934, as amended", referred to in this section, is Act June 18, 1934, ch 576, 48 Stat. 984, which appears generally as 25 USCS §§ 461 et seq. For full classification of this act, consult USCS Tables volumes.

§903d. Transfer of assets of Menominee Enterprises, Inc.

(a) Negotiation and development of plan for assumption of assets; submittal of plan to Congress. 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 the date of the enactment of this Act [enacted Dec. 22, 1973].

(b) 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. 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 this Act, 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.

(c) 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. The Secretary shall accept the real property (excluding any real property not located in or adjacent to the territory constituting, on the effective date of this Act, 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.

(d) Consultation by Secretary and Menominee Restoration Committee with appropriate State and local government officials for nonimpairment of necessary governmental services upon transfer of assets. The Secretary and 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.

(e) Establishment of local government bodies, etc., by Wisconsin to provide necessary governmental services in Menominee County. For the purpose of implementing subsection (d), 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 the effective date of this Act, the county of Menominee.

(Dec. 22, 1973, P.L. 93-197, § 6, 87 Stat. 772.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The effective date of this Act", referred to in this section is probably intended to be a reference to the date of enactment of Act Dec. 22, 1973, which was enacted Dec. 22, 1973.

INTERPRETIVE NOTES AND DECISIONS

Allegations that MRC (Menominee Restoration Committee had maintained continuing control over tribal resources, as opposed to control which legally under the Restoration Act (25 USCS §§ 903-903f) tribal officials were to exercise, and that tribal assets were dissipated by MRC, stated cause of action under Menominee Restoration Act. Sturdevant v Wilber (1978, ED Wis) 456 F Supp 428.

Corporation to which all tribal assets were conveyed pursuant to termination plan was under certificate of beneficial interest issued by the tribe, successor entity to the tribe and was holder of hunting and fishing rights which did not upon transfer of part of land constitute an interest in the land that would be transferred with it. Van Camp v Menominee Enterprises Inc. (1975) 68 Wis 2d 332, 228 NW2d 664.

§903e. Rules and regulations.

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

(Dec. 22, 1973, P.L. 93-197, § 7, 87 Stat. 773.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 22, 1973, P.L. 93-197, 87 Stat. 770, which appears generally as 25 USCS §§ 903 et seq. For full classification of this Act, consult USCS Tables volumes.

§903f. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(Dec. 22, 1973, P.L. 93-197, § 8, 87 Stat. 773.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 22, 1973, P.L. 93-197, 87 Stat. 770, which appears generally as 25 USCS §§ 903 et seq. For full classification of this Act, consult USCS Tables volumes.