

LUMBEE TRIBE OF NORTH CAROLINA
P.O. Box 2709
Pembroke, NC 28372
910.521.7861
www.lumbeetribe.com

ORDINANCE NO. 2005-0001

DATE: 4/26/2005

WHEREAS, The Lumbee Tribe of North Carolina, a recognized Indian Tribe of the State of North Carolina, subject to the Constitution of the Lumbee Tribe of North Carolina and its inherent powers of self-government; and

WHEREAS, Article VII, Section 1 of the Constitution of the Lumbee Tribe of North Carolina delegates all legislative authority to the Tribal Council; and

WHEREAS, Article XI, Section 2 of the Constitution of the Lumbee Tribe of North Carolina states the first Tribal Council elected under this Constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, and which ordinance shall require a tribal official to reclude him or herself from any decision or vote affecting his or her pecuniary interest or a family member.

WHEREAS, the Council has determined that the Ethics and Conflict of Interest Ordinance shall guide the actions of all persons and provide guidance for conducting business, protect the interests of Tribal members and protect the reputation and integrity of Tribal government.

THEREFORE, Be it enacted by the Tribal Council of the Lumbee Tribe of North Carolina the following ordinance that shall be cited as "**ETHICS AND CONFLICT OF INTEREST.**"

SECTION 1: ETHICS IN PERFORMANCE OF DUTY

1. The Tribal Chairperson, Council member, officer, appointee, employee (hereinafter referred to as "member") or any person or entity that provides contractual services:
 - a. Shall not use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with anything of economic value.
 - b. Shall not use information that is gained in the execution of his or her office or employment that is not available to the general public to further or seek to further the member's private or personal interest

- c. Shall not use his or her office or employment to further private or personal interest by seeking to influence a decision that is made by another person,
 - i. Elected and appointed members of the Legislative and Judicial Branches and the tribal chairperson shall not be eligible for employment with the Lumbee Tribe within three years of the end of their service.
- d. Shall not accept a fee, gift or personal benefit, except compensation authorized by tribal law, that is connected directly or indirectly with the performance of his or her duties of office or employment,
- e. Shall not use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person to engage in political activity.
- f. No member of the Judiciary shall be qualified to act as such in any case where she/ he has any direct interest, or where any party involved in the case is a relative by marriage or blood in the first or second degree
- g. Shall not disclose or use confidential information or information concerning economic development, perspective grants, or technology research or development which was received in his or her official tribal government capacity to further his or her personal or pecuniary interests.
 - i. Members entrusted with Tribal funds or equipment for carrying out Tribal business shall be subject to the following requirements and procedures, in order to provide a uniform system and to avoid actual or apparent impropriety.
 1. Held personally accountable and liable for Tribal monies entrusted to their control in performance of official Tribal duties.
 2. Tribal funds withdrawn for specific authorized purposes by a member shall be used for those specific purposes only.
 3. In all cases, Tribal funds not expended for authorized purposes must be repaid by the responsible member within seven (7) working days after the date on which such funds were to have been expended.
 4. Members shall be held personally accountable and liable for all equipment entrusted to them in the performance of Tribal business, if damages occur, due to negligence or recklessness.

5. Members shall not use, or authorize the use of, tribally owned or leased vehicles or equipment and other transportation equipment for purposes other than those officially authorized.

SECTION 2: CONFLICT OF INTEREST IN PERFORMANCE OF DUTY

1. A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.
2. A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Lumbee Tribal Government or any committee, shall:
 - a. Upon knowledge of the conflict by any written or oral communication, disclose the general nature of the conflict of interest according to the laws of the Tribal Government and/or any funding agency involved.
 - b. Withdraw from any meeting or discussion if he or she becomes knowledgeable that a conflict exists and shall not vote or participate in the discussion or consideration of the matter. If a person withdraws or recuses him or herself from the meeting because of a conflict of interest, he or she is still counted for purposes of a quorum, except in the matter of a Tribal Council meeting.
 - c. If a member withdraws from discussion because of a conflict of interest, a written record shall be made that includes the withdrawal of the member from the meeting and that a conflict of interest was discussed, and
 - d. A Judge may be disqualified upon his/ her own motion or by application by any party in the proceeding upon filing a verified written motion, supported by an affidavit.
3. A member should not represent the interests of a third party who has an actual or potentially adversarial relationship with the Lumbee Tribe (i.e. as legal counsel, trustee, general agent or consultant)
4. A member shall not work for, be an agent or consultant of any entity that competes for the same contracts, grants, and/or services as the Lumbee Tribe of North Carolina without prior approval of a two-thirds vote of the Tribal Council.

SECTION 3: CONFLICT OF INTEREST IN PUBLIC CONTRACTING FOR SERVICES AND GOODS

1. A member shall not seek to induce the Tribal Chairperson, Tribal Council, officer, appointee or employee to procure goods and/or services from the spouse or family member or from the client or principal of the Tribal Chairman, Council member, officer, or employee.
2. The following shall be considered conflict of interest relationships in contracting for bids and services:
 - a. An employee, officer or agent involved in making the award
 - b. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepson, stepdaughter, stepsister, half brother, and half sister) and any spousal relationship
 - c. His/her partner or
 - d. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment or any of the above.

SECTION 4: JUDGMENT OF CONFLICT OF INTEREST

A conflict of interest exists if there is substantial interest by the member and shall be judged by the following:

1. Ownership by a person, or by the person's spouse or dependent child, collectively, including ownership as the beneficiary of a trust, of an interest or 10% or more in a business entity,
2. Annual income, or expected annual income, by the person or by the person's spouse (or relationship) or dependent child, collectively, or more than \$5,000 from a business entity. Annual includes earned income only if the person, or the person's spouse or dependent child, will receive a bonus, commission or other payment in any amount directly as a result of a contract with or purchase by the Lumbee Tribal Government. Income does not include income from capital gains.
3. Service by the person or the person's spouse or spousal relationship or dependent child, as an officer, trustee, director or employee of a business entity except that uncompensated service as a director, officer, or trustee of a not-for-profit corporation is not a substantial interest.

SECTION 5: PROCEDURES TO HANDLE CONFLICT OF INTEREST AND ETHICS VIOLATION

1. To file a complaint, a person must have reasonable grounds to believe that a member (excluding employee) is in violation of this Ordinance and shall:

- a. In writing, state the grounds for the belief and the nature of the alleged violation and present the written statement to the Chairperson of the Ethics Committee, and may chose to present the complaint to all members of the Ethics Committee.
 - i. Any person, including member, who has reasonable grounds to believe that an employee is in violation of this Ordinance shall follow the employee policy handbook to report the employee's violation.
 - ii. Any interested party can file an affidavit setting forth facts establishing, by reason of bias or prejudice of the Judge to whom the case is assigned, that the party cannot have a fair trial, the Judge shall disqualify himself/ herself. Such affidavit shall be filed not later than ten (10) days before the trial, addressed directly to the judiciary.
 - b. The Chairperson of the Ethics Committee shall convene a meeting within ten (10) days of receiving the complaint in order to consider the information.
 - c. If the Chairperson of the Ethics Committee fails or is unable to convene a meeting, the Vice Chair of the Committee shall convene a meeting within ten (10) days of becoming aware of the need to convene a meeting.
 - d. The alleged violator is to be notified within five (5) business days, and may be present at any committee meeting that is convened to hear the facts on the allegation, to provide facts or arguments that he or she did not violate this Ordinance. The complainant, (accuser) shall be required to be present at any hearing, unless enough evidence is available to show that the accusation is true.
 - e. At the next scheduled Council meeting or at a special called meeting, the Committee shall render an opinion to the Tribal Council regarding the compliance of the member with the provisions of this Ordinance.
 - f. The Council shall render a determination in writing in five (5) business days, including its evidentiary findings, which must be approved by a simple majority of the Council members voting and in which any accused Council Member shall not vote in this determination.
2. If the Ethics Committee fails to convene a meeting to hear the complaint, a person can take the complaint to any lower court with jurisdiction, and may be appealed to the Supreme Court.

SECTION 6: SANCTIONS

1. A member (excluding employee) found guilty of violating this Ordinance shall be notified in writing by the Speaker of the Tribal Council of the findings and the sanctions which may be one or more of the following actions:
 - a. To reprimand or censure the member in writing which shall be a part of the official minutes.
 - b. To prohibit the person from holding any further committee or assignments of office or authority.
 - c. To remove the person from any position or office held in accordance with the Constitution and any Ordinance on removal of members.
2. If the findings show that the Tribal Chairman has violated this Ordinance, the Tribal Chairman may be subject to the same sanctions.
3. If the Tribal Chairman finds that the Tribal Administrator or an employee has violated this Ordinance, the Tribal Chairman shall report the violation to the Tribal Council. The Tribal Administration shall report any violation of this Ordinance by an employee to the Tribal Chairman.
4. The Chairperson and Tribal Council may use the same sanctions (a – c), (Section 6), or remove the Tribal Administrator, as they deem appropriate.
5. An employee, with the exception of the Tribal Administrator, violating this Ordinance shall be subject to disciplinary action by the Tribal Administrator, which may include immediate termination of employment if circumstances warrant, provided, however,
 - a. If the Tribal Administrator violates the prohibitions set out under this section, he or she shall be subject to disciplinary action by the Tribal Chairperson and Council, which may include immediate termination of employment if circumstances warrant.
 - b. Employees disciplined according to this section shall have recourse to the grievance procedures set out in the Personnel Manual.
 - c. If the person, including member, is not satisfied with the decision rendered regarding the employee's violation, then he or she can appeal to the judiciary system.

SECTION 7: ESTABLISHMENT OF THE ETHICS COMMITTEE AS A STANDING COMMITTEE

This Ordinance establishes the Ethics Committee as a Standing Committee that shall follow the guidelines for all committees established by the Tribal Council.

SECTION 8: ACTIVITIES ON BEHALF OF CONSTITUENTS

This Ordinance does not prohibit the activities in which members normally engage on behalf of constituents.

Definitions:

Conflict of Interest - A member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private and/or personal interest.

Apparent Conflict of Interest - A member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been (or can be) affected by his or her private and/or personal interest.

Ethics Committee - A Committee of tribal council members who shall be responsible for the designated task written in this Ordinance along with any other responsibility established by the Tribal Government.

Political Activity - an effort to support or oppose the election or appointment of a person for political office in an election or appointment.

Spouse - a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

1. Has entered into a written agreement under which they have agreed to live apart,
or
2. Is subject to an order of the court recognizing the separation, and whose agreement or court order shall not be affected by any action between the spouse and the member

Child - includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family

Spousal Relationship - although not married, male and female living, as husband and wife

Officer/official/representative of the tribe - the person elected, appointed, or employed

Service – the end of a term or upon resignation

Interested Party – plaintiff, defendant, any other person having standing

Private interest - does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

1. Applies to the general public,
2. Affects a member as one of a broad class of electors, or
3. Concerns the remuneration and benefits of a member or an office or employee.

Ethics - in this context is that contained in Black's Law Dictionary: "professionally right or befitting; conforming to professional standards of conduct."

CERTIFICATION

THIS ORDINANCE ADOPTED THIS THE 26 DAY OF APRIL, 200 5 AT A MEETING OF TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA BY A VOTE OF 14 FOR, 0 AGAINST.

Frances Chavis
Secretary of the Tribal Council of the Lumbee Tribe of North Carolina

YE TO

Tribal Chairman of the Lumbee Tribe of North Carolina

POSTING

This Ordinance duly posted in the Office of the Lumbee Tribe of North Carolina on this the 12 day of MAY, 2005.

Ruth B. Locklear

Ruth B. Locklear, Tribal Clerk

This ordinance was duly adopted on 5/26/2005 by a vote of 19 for and 1 abstain.

Frances Chavis

Secretary of the Tribal Council of the Lumbee Tribe of North Carolina