

## **PART 5 CANDIDATES FOR OFFICE**

### **03-05-01      Qualifications of Candidates**

Any enrolled member of the Sisseton-Wahpeton Oyate, twenty-one (21) years of age or older, shall be eligible to seek and hold office, either as an Executive officer of the Tribe or as a member of the Council, provided the member meets the candidate qualifications. The burden of proof lies solely with the member that he or she meets the following qualifications:

- (A) That in order to ensure that candidates for the office of Chairman, Vice-Chairman or Secretary have a thorough knowledge of Tribal Affairs, an understanding of the issues confronting Tribal members in the conduct of their daily affairs, and first-hand knowledge Reservation life, every candidate must have been living within the original boundaries of the reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota, for the twelve consecutive months immediately preceding the deadline for filing a Notice of Intent to run for the Office of Chairman, Vice-Chairman, or Secretary.
- (B) That in order to ensure that candidates for positions on the Council have a thorough knowledge of Tribal Affairs, an understanding of the issues confronting Tribal members in the conduct of their daily affairs, and a first-hand knowledge of Reservation life, every candidate must have been living within the original boundaries of the Reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota, for the twelve consecutive months immediately preceding the deadline for filing a Notice of Intent to run for the position of Council member.
- (C) That a candidate shall not have been convicted of a felony.
- (D) That a candidate shall not have a dishonorable discharge from any branch of the Armed Forces and has provided the Reservation Election Board with a signed release of information form authorizing the Veteran's Service Office to release to the Tribe information as to the candidate's military discharge.
- (E) That a candidate for an Executive Office is eligible for coverage under the Tribe's Executive Office position bond.
- (F) No tribal employee shall be allowed to sit on Council.
- (G) That any candidate for a position on the Council or the Executive Committee who has a debt to the Sisseton-Wahpeton Oyate, as determined by the Reservation Election Board in accordance with the provisions of Part 5 of this Code, shall be ineligible to run for a position on the Council or the Executive Committee.

(H) That any candidate for a position on the Council or the Executive Committee who has been deemed guilty of Improper Conduct, as defined in Chapter 55, or who has had any prior convictions or pending charges such as, but not limited to, embezzlement, theft, fraud, or breach of public trust, as defined in Chapter 24, shall be ineligible to run for a position on the Council or the Executive Committee.

(I) That any candidate for a position on the Council or the Executive Committee who has any prior convictions or pending charges of Official Misconduct, as defined in Chapter 24, shall be ineligible to run for a position on the Council or the Executive Committee. (Note: this is contingent on the suggested change to Chapter 24, 24-10-16.)

(J) That any candidate for a position on the Council or the Executive Committee who has any prior convictions or pending charges of Embezzlement and Theft from a Tribal or District Organization, as defined in Chapter 24, shall be ineligible to run for a position on the Council or the Executive Committee. (Note: this is contingent on the suggested change to Chapter 24, 24-10-16.)

#### **03-05-02 Filing the Notice of Intent**

(A) Any tribal member meeting the requirements of Section 03-05-01, subsections A through G may become a candidate for any office upon presentation to the Reservation Election Board a notice of intent to be a candidate and the office for which such candidacy is sought. The Tribal member shall utilize the forms prescribed by the Reservation Election Board. The deadline to file a notice of intent with the REB shall be on or before the second Friday of May.

- (1) For Executive positions, the filing fee is two hundred fifty (\$250.00) to be paid at the time of filing the notice of intent.
- (2) For Tribal Council positions, the filing fee is two hundred dollars (\$200.00) to be paid at the time of filing the notice of intent.

#### **03-05-03 Resolution of Disputes Pertaining to Debts**

In regard to the debt qualifications requirement, the burden of proof lies solely with the applicant. Each applicant must file with the notice of intent, on a form prescribed by the Reservation Election Board, documented proof that the applicant does not have a debt to the Tribe. The Reservation Election Board shall establish a form indicating the name of the applicant and the name of the Tribal creditors. Failure to file the signed form shall result in the denial of certification from the Reservation Election Board.

#### **03-05-04 The Reservation Election Board's Request for Debt Information**

No later than the third Friday of May, of an election year the Reservation Election Board must send written notice to the Tribe, as that term is defined in section 03-02-10, setting forth the names of all the candidates for Tribal Council. The notice shall inform the Tribe and each of the

entities included within the definition of the Tribe that it is required to inform the Reservation Election Board whether any candidate has a debt to the Tribe, which is current through April 30 of the election year. The debt information requested by the Reservation Election Board must include the name of the candidate and any guarantors, the debt, the amount of debt (including late payments and penalties, if any), the basis for the debt, whether the debt is known to be disputed by the debtor, a copy of the invoices, bill, and other communication provided to the debtor, and any other information relevant to substantiating the debt.

**03-05-05      The Tribe and Each Tribal Entity Must Provide Debt Information to The Reservation Board**

No later than the fourth Friday of May, of an election year the Tribe and each of the entities included within the definition of the Tribe must inform the Reservation Election Board in writing whether any candidate has a debt, current through April 30 of the election year. The written response must include the name of the candidate and any guarantors, the debt, the amount of debt (including late payments and penalties, if any), the basis for the debt, a copy of the invoices, bills, and other communication provided to the debtor, and any other information relevant to substantiating the debt.

**03-05-06      Written Allegations That a Candidate is not Qualified Must Be Signed and Filed with the Reservation Election Board**

Written allegations that a candidate is not qualified under section 03-05-01 may be filed with the Reservation Election Board by (1) any other candidate for that position, (2) a registered voter from the District of the challenged candidate, or (3) in the case of a candidate for an Executive office a registered voter. Such a written allegation must be signed by the individual making the written allegations and filed with the Reservation Election Board no later than the second Friday of July. No written allegations shall be received or considered by the Reservation Election Board after the second Friday of July of the election year. Anonymous allegations shall not be considered by the Reservation Election Board. The written allegation must identify the specific qualification(s) that the candidate allegedly does not satisfy and be supported with the documented proof.

**03-05-07      The Reservation Election Board's Notice of a Debt to Candidates**

No later than the first Friday in June of an election year, the Reservation Election Board must send written notice of a debt or guaranty to the candidate, which notice shall specify that arrangements must be made to satisfy the debt no later than the third Friday of June. The notice must inform the candidate that should the debt be disputed, the candidate's sole remedy is to satisfy the dispute no later than the third Friday of June. The notice must inform the candidate that he or she must first attempt to satisfy the debt in full with the Tribe or Tribal entity included within the definition of Tribe and if the candidate and the Tribe or tribal entity are unable to resolve the debt, then the candidate's sole remedy is to request the Tribal Court to declare that the debt does not exist, is current, or otherwise not in default. The notice must inform the candidate that failure to satisfy the debt according to the terms of the debt will automatically disqualify the candidate under Section 03-05-01. The notice must also state that proof of

satisfaction of the debt or a Tribal Court order must be supplied in writing to the Reservation Election Board no later than the fourth Friday of June.

**03-05-08      Burden of Proof and Sole Responsibility to Resolve Debts Lies with The Tribal Member Seeking Office and Notice Must Be Provided to The Reservation Election Board**

A Tribal member having notice of a debt from the Reservation Election Board or by any other means, including notice or knowledge of the debt, is obligated to satisfy the debt no later than the third Friday of June and provide proof of satisfaction of the debt must be supplied in writing to the Reservation Election Board no later than the fourth Friday of June. The burden of proof and sole responsibility to resolve the debt, including any associated disputes, prior to these timelines lies solely with the candidate. Proof of satisfaction of the debt in full shall be set forth on a Form approved by the Reservation Election Board or in an Order issued by the Tribal Court.

**03-05-09      Review of Qualifications by The Reservation Election Board**

All notices of intent to be a candidate shall be subject to review by the Reservation Election Board. It shall be the duty of the Reservation Election Board to determine whether the candidate meets the qualifications described in 03-05-01, subsections A through G of the Ordinance. In making its determination, the Reservation Election Board is authorized to hold a hearing prior to issuing a formal decision to not certify an applicant because he or she may not meet the qualification standards in Section 03-05-01.

If the Reservation Election Board determines that an applicant does not meet the qualification standards provided in Section 03-05-01, the Board shall issue a preliminary decision stating why the candidate is unqualified and deny certification. The Board's preliminary written decision must be issued no later than the first Friday of July. In accordance with the Board's hearing procedures, the applicant may request a hearing with the Board solely to dispute the Board's preliminary decision finding the applicant to be unqualified.

If the Reservation Election Board determines that an applicant meets the qualification standards provided in Section 03-05-01, the Board shall issue a preliminary decision certifying the candidate. The Board's preliminary decision must be issued no later than the first Friday of July. Any preliminary decision of the Reservation Election Board to qualify a candidate may be contested by (1) any other candidate for that position, (2) a registered voter from the District of the challenged candidate, or (3) in the case of a candidate for an Executive office a registered voter.

The request for a hearing or request to challenge a candidate shall be made by the second Friday of July. An opposing candidate or a registered voter who has timely filed written allegations against the candidate under section 03-05-06 shall receive written notice of the hearing from the Board and be provided an opportunity to be heard. For purposes of the hearing, the Board's initial certification decision shall be deemed a preliminary decision subject to modification after the hearing. After the hearing, the Board shall issue a final qualification decision to certify or not certify the candidate.

## **03-05-10      Limited Appeal to The Tribal Court**

Any final decision issued by the Reservation Election Board after a hearing finding the candidate unqualified to run for office may be appealed by that candidate to the Tribal Court. The party aggrieved by the Board's final decision must file the appeal with the Tribal Court on or before the first Friday of August. When the Tribal Court is reviewing a challenged to the Election Board's final decision of candidate eligibility, the Election Board's findings of fact shall be unreviewable. The Tribal Court shall therefore make no factual findings, but shall accept the facts as determined by the Election Board, and shall not hear the matter anew. The Tribal Court may overturn the Election Board's findings only where the person challenging the Board's decision has shown that the Board committed a clear error of law in either qualifying or disqualifying a candidate. The Tribal Court shall review the records established by the Reservation Election Board and is prohibited from considering any evidence that was not presented to the Board. The Tribal Court shall hear and determined the appeal by the fourth Friday of August. The Tribal Court's determination of the appeal shall be final and no appeal may lie to the Northern Plains Intertribal Court of Appeals or any other appellate court of the Tribe.

## **03-05-11      Certification Required**

- (A) Any enrolled member of the Sisseton-Wahpeton Oyate shall be considered a candidate for Tribal Office when the Reservation Election Board certifies that the candidate-applicant meets the qualifications described in Section 03-05-01, subsection A through G of this Ordinance. Certification will be completed no later than the last Friday of August for both Executive and Council candidates.
- (B) In the even the Reservation Election Boards issues a preliminary decision and no request for hearing is filed by a disqualified candidate or challenging candidate by the second Friday in July, the Reservation Election Board shall certify candidates on the following working day.
- (C) In the event no appeal of the Reservation Election Board's final decision has been filed in Tribal Court by the first Friday of August, the Reservation Election Board shall certify candidates on the following working day.

## **PART 9 GENERAL PROVISIONS FOR ALL ELECTIONS**

### **03-09-07      Conduct of Election Officials**

- (A) District Election officials shall not be absent from the duties of their positions from the opening of the polls until all ballots have been counted and secured in the ballot box and delivered to the Reservation Election Board. In addition, Reservation

Election Board and District Election Board officials shall not express any preference for any candidates.

(B) By a majority vote of the Reservation Election Board members or based upon a motion from the District, cause for removal of a Reservation Election Board member shall be one or more of the following:

- (1) Gross Incompetence – unable or unwilling to perform the duties of the Reservation Election Board.
- (2) Abandonment of Positions – not attending three consecutive scheduled meetings.
- (3) Misuse of Position unauthorized personal use of tribal equipment, manpower, or materials.
- (4) Malfeasance of Position – including partiality or oppression.
- (5) Disclosure of confidential and/or privileged information.
- (6) Public conduct unbecoming or detrimental to the Sisseton-Wahpeton Oyate or conduct so as to question the integrity of the election process.
- (7) Embezzlement or Theft from a Tribal or District Organization – unauthorized personal use of any of the moneys, funds, credits, goods, assets, or other property belonging to the Tribe, tribal organization, District, or subsidiary thereof. (Want for REB members too?)

Upon Majority vote of the Reservation Election Board members or based upon a motion from the District, cause for removal shall be submitted to Tribal Council for proposed action.