

Thomas G. Lemon - KS-16120  
CAVANAUGH, BIGGS & LEMON, P.A.  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, Kansas 66614-4479  
TEL: 785/440-4000  
FAX: 785/440-3900  
E-MAIL: tlemon@cavlem.com  
ATTORNEYS FOR PLAINTIFF

IN THE TRIBAL DISTRICT COURT, KICKAPOO TRIBE IN KANSAS

THE KICKAPOO TRIBE OF INDIANS OF THE	)	
KICKAPOO RESERVATION IN KANSAS,	)	
Plaintiff,	)	
v.	)	Case Number: CIV-15-29
	)	
BOBBI DARNELL,	)	
Defendant.	)	
	)	

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Comes now the Plaintiff, The Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas, by and through its attorney, Thomas G. Lemon, of Cavanaugh, Biggs & Lemon, P.A., and pursuant to 6 KNTC § 905, moves the Court for summary judgment in its favor as to the Plaintiff's claims against Defendant Bobbi Darnell. Specifically, the Plaintiff seeks summary judgment against Defendant Darnell finding that Defendant Darnell intentionally violated the Standard Procedures for the Kickapoo Tribe in Kansas for Preparing, Enacting, and Administering an Annual Budget, and that Defendant Darnell should be subjected to civil penalties for the violations. A Memorandum supporting Plaintiff's Motion for Summary Judgment is submitted contemporaneously herewith.

CAVANAUGH, BIGGS & LEMON, P.A.

By 

Thomas G. Lemon - KS-16120  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, Kansas 66614-4479  
TEL: 785/440-4000  
FAX: 785/440-3900  
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16 day of September, 2016, he served a true and correct copy of the above and foregoing document by:

- United States mail, first class postage prepaid  
 Facsimile transmission in accordance with Kansas Supreme Court Rule 119 to the fax number listed below  
 E-Mail transmission in accordance with Kansas Supreme Court Rule 122 to the e-mail address listed below  
 Hand delivery

addressed as follows:

Napoleon Crews  
Crews Law Firm  
3300 Clinton Parkway Court, Ste. 010  
Lawrence, KS 66047  
ATTORNEYS FOR DEFENDANTS

CAVANAUGH, BIGGS & LEMON, P.A.

By 

Thomas G. Lemon - KS-16120  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, Kansas 66614-4479  
TEL: 785/440-4000  
FAX: 785/440-3900  
ATTORNEYS FOR PLAINTIFF

Thomas G. Lemon - KS-16120  
CAVANAUGH, BIGGS & LEMON, P.A.  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, Kansas 66614-4479  
TEL: 785/440-4000  
FAX: 785/440-3900  
E-MAIL: tlemon@cavlem.com  
ATTORNEYS FOR PLAINTIFF

IN THE TRIBAL DISTRICT COURT, KICKAPOO TRIBE IN KANSAS

THE KICKAPOO TRIBE OF INDIANS OF THE	)	
KICKAPOO RESERVATION IN KANSAS,	)	
Plaintiff,	)	
v.	)	Case Number: CIV-15-29
	)	
BOBBI DARNELL,	)	
Defendant.	)	
	)	

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Comes now the Plaintiff, The Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas, by and through its attorney, Thomas G. Lemon, of Cavanaugh, Biggs & Lemon, P.A., and submits the following Memorandum in Support of Plaintiff's Motion for Summary Judgment pursuant to 6 KNTC § 905.

**I. NATURE OF THE CASE**

Plaintiff filed a Petition, followed by an Amended Petition, initiating this lawsuit. Plaintiff seeks judgment finding that Defendant Darnell intentionally violated the Standard Procedures for the Kickapoo Tribe in Kansas for Preparing, Enacting, and Administering an Annual Budget (hereinafter the "Kickapoo Budget Ordinance"), and that Defendant Darnell should be subjected to civil penalties for the violations. Plaintiff's claims against Defendant Darnell arise out of actions taken by her while she served as Treasurer of the Kickapoo Tribal

Council. In violating the Kickapoo Budget Ordinance, Defendant Darnell violated her official duties as the Treasurer of the Kickapoo Tribal Council, and acted intentionally outside the scope of her official powers. Furthermore, under the Kickapoo Budget Ordinance, Defendant Darnell should be held liable for civil penalties for intentionally violating the Ordinance.

## **II. STATEMENT OF UNCONTROVERTED FACTS**

Plaintiff sets forth the following statements of uncontroverted fact in support of its Motion for Summary Judgment:

1. On August 17, 2015, the Plaintiff initiated this case by filing a Petition Finding Violation of The Kickapoo Tribe in Kansas' Standard Procedures For Preparing, Enacting and Administrating an Annual Tribal Budget Ordinance (hereinafter the "Petition"). (*See, pleadings.*)

2. Thereafter, Plaintiff filed an Amended Petition Finding Violation of The Kickapoo Tribe in Kansas' Standard Procedures for Preparing, Enacting and Administrating an Annual Tribal Budget Ordinance (hereinafter the "Amended Petition") against Defendant Darnell. (*See, pleadings.*)

3. In the Amended Petition, Plaintiff seeks an order from the Court finding that Defendant Darnell intentionally violated the Kickapoo Budget Ordinance as the Treasurer and Chief Financial Officer of the Kickapoo Tribe, and that Defendant Darnell should be subjected to civil penalties for such violations under the terms of the Kickapoo Budget Ordinance. (*See, pleadings.*)

4. Article VII, Section 2 of the Kickapoo Budget Ordinance is entitled "Civil Penalty," and states the following: "Any person who intentionally violates the provisions of the

standard procedures shall be required to pay civil penalty [sic] of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500). Jurisdiction is hereby conferred on the Kickapoo District Court to enforce the provisions of the standard procedures." (*See*, Exhibit 3 to Amended Petition ¶¶ 6-7, attached hereto and incorporated herein as Exhibit A.)

5. On or about September 24, 2015, Defendant Darnell filed Defendants' Combined Motion to Dismiss Amended Petition, for Attorney's Fees and Costs, and for Damages for Defamation of Character (hereinafter the "Motion to Dismiss"). (*See*, pleadings.)

6. On November 5, 2015, Plaintiff filed its Response to Defendants' Motion to Dismiss. (*See*, pleadings.)

7. In the Motion to Dismiss, Defendant Cadue asked the Court to dismiss the Plaintiff's Amended Petition. (*See*, Motion to Dismiss, pp. 1 and 7.)

8. On December 31, 2015, Plaintiff filed its Supplemental Response to Defendants' Combined Motion to Dismiss Amended Petition, for Attorney's Fees and Costs, and for Damages for Defamation of Character. (*See*, pleadings.)

9. On February 22, 2016, Defendant Darnell filed a Memorandum of Authorities in Aid of Motion Hearing with regard to her Motion to Dismiss. (*See*, pleadings.)

10. On or about February 29, 2016, Plaintiff filed its Response in Opposition to Defendant's Memorandum of Authorities in Aid of Motion Hearing with regard to Defendant Darnell's Motion to Dismiss. (*See*, pleadings.)

11. On March 11, 2016, the Court filed a Court Minute/Journal Entry denying Defendant Darnell's Motion to Dismiss. (*See*, pleadings.)

12. On or about March 22, 2016, Defendant Darnell filed a Notice of Interlocutory Appeal, requesting an interlocutory appeal to the Supreme Court of the Kickapoo Tribe in Kansas of the denial of her Motion to Dismiss. (*See*, pleadings.)

13. On July 25, 2016, the Supreme Court of The Kickapoo Tribe in Kansas issued an Order Denying Interlocutory Appeal. (*See*, pleadings.)

14. Following the Kickapoo District Court's denial of Defendant Darnell's Motion to Dismiss on March 11, 2016, and the Kickapoo Supreme Court's denial of the interlocutory appeal, Defendant Darnell has never filed an Answer or other responsive pleading to the Amended Petition.

15. On August 16, 2016, Plaintiff issued a Notice to Take Deposition Duces Tecum of Defendant Darnell. (*See*, pleadings.)

16. On September 9, 2016, the District Court held a hearing in this case. At that hearing, the Court placed Defendant Darnell under oath, and inquired as to whether she would testify in a deposition in this case pursuant to the Notice to Take Deposition Duces Tecum, or whether she would stand on her right to remain silent under the Indian Civil Rights Act. Defendant Darnell testified under oath that she would not testify in a deposition in this case. (*See*, Court Minute/Journal Entry filed September 9, 2016).

17. In the September 9, 2016 Court Minute/Journal Entry issued by the Court with regard to the September 9, 2016 hearing, the Court stated that, as a result of Defendant Darnell's exercise of her right to remain silent in this matter, "upon appropriate motion, the Court may find that certain finding [sic] can no longer be challenged by Defendants, and that summary findings may issue." (*See*, Court Minute/Journal Entry filed September 9, 2016).

18. Due to Defendant Darnell's failure to file an Answer or other responsive pleading to the Amended Petition following the denial of her Motion to Dismiss, the allegations set forth in the Amended Petition are undisputed. (*See*, pleadings.)

19. Furthermore, due to Defendant Darnell's refusal to provide deposition testimony in this case as the result of her assertion of her right to remain silent under the Indian Civil Rights Act, Defendant Darnell cannot challenge or refute the Plaintiff's allegations in this case. (*See*, Court Minute/Journal filed September 9, 2016.)

20. Among the facts and allegations set forth in the Amended Petition that are undisputed, due to Defendant Darnell's failure to file an Answer and her refusal to provide deposition testimony in this case, are the following statements and allegations:

1. On January 8, 1999, the Kickapoo Tribal Council adopted the Kickapoo Budget Ordinance. (*See*, Amended Petition, ¶ 6.)
2. Pursuant to that Ordinance, Article I, Section 4, defines the "BUDGET OFFICER" as the Tribal Chairperson. Section 5 defines the "CHIEF FINANCIAL OFFICER" as the Tribal Treasurer. Section 1 defines the "BUDGET YEAR" as the fiscal year for which a budget is made and Article II, Section 3 reads that the fiscal year shall begin on the first day of January of each year. (*See*, Amended Petition, ¶7.)
3. The ordinance at Article II, Section 1 states that,  
  
"The purpose of the standard procedures is to adopt rules governing the Kickapoo Tribe in Kansas and its proceedings for administering the financial affairs of the Tribal Council, and to establish a standard procedure for: (1) the making and administration of budgets, (2) placing responsibility for the tasks related to budget preparation and administration, (3) the determination of net revenue from any gaming

activities, (4) taxes and other revenues in such a manner that budgets may be balanced on the basis of actual revenues and obligations within the budget period, (5) and the establishment of appropriations, the payment of debt, and the control of other expenditures." (See, Amended Petition, ¶ 8.)

4. The ordinance further declares in Article III, Section 6, "The budget shall be adopted by the favorable votes of not less than a majority of all of the members of the tribal council at a meeting duly called and convened, in which a quorum is present." (See, Amended Petition, ¶ 9.)
5. A majority of the supplemental tribal budget revenue is from proceeds obtained from the Kickapoo Tribe's gaming operation, the Golden Eagle Casino located on the Kickapoo Reservation. (See, Amended Petition, ¶ 10.)
6. The Kickapoo Tribe operates its gaming enterprise, the Golden Eagle Casino, pursuant to the Indian Gaming Regulatory Act (IGRA). The IGRA was enacted by the United States Congress on October 17, 1988, to regulate the conduct of gaming on Indian Lands. The IGRA establishes the regulatory structure and oversight for Indian gaming in the United States. The Bureau of Indian Affairs Office of Indian Gaming Office of Indian Gaming reviews and approves tribal Revenue Allocation Plans required under the IGRA, which detail how net casino revenues will be allocated. (See, Amended Petition, ¶ 11.)
7. The Tribal Council approved the Kickapoo Tribe in Kansas "Net Gaming Revenue Allocation Ordinance," which formalized the plan for allocation of net gaming revenue. Accordingly, "31% of the net gaming revenue

shall be used to fund supplemental Tribal Government Operations and Programs . . . 30% of the Net Gaming Revenue shall be used per capital distributions to all enrolled-eligible tribal members. . . , and 39% of the Net Gaming Revenue shall be used to fund tribal economic development . . ."  
(See, Amended Petition, ¶ 12.)

8. The Tribal Council has acquired meeting Minutes which show that during a Tribal Council meeting held on October 16, 2013 that:

"Lester Randall made a motion to adopt Resolution #KT14-37 approving the Kickapoo Tribe in Kansas Fiscal Year 2014 Budget in the amount of \$17,000,000.00 with Indirect Cost at \$1,696,000.00. Seconded by Curtis Simon, Sr. 5 for, 0 against, 0 abstentions; Chair not voting; motion passed." (See, Amended Petition, ¶ 13.)

9. At a regular Tribal Council meeting held on November 6, 2014,

"Tina Wahwasuck made a motion to amend action which approved Fiscal Year 2014 budget for the Kickapoo Tribe in Kansas. Lester Randall, Tina Wahwasuck, and Curtis "Bill" Simon, Sr. recall being present at an October 16, 2013 Tribal Council Meeting, but all three individuals recall this issue being tabled until a later date. Mr. Randall affirmatively denies making a motion to approve this resolution and Mr. Simon affirmatively denies seconding the motion. Motion seconded by Curtis "Bill" Simon.

Roll Call Vote: Russell Bradley, yes - Fred Thomas, yes - Tina Wahwasuck, yes - Curtis "Bill" Simon, yes - Westley "Sagtuk" Banks, yes.

5 for, 0 against, Chairman abstaining; motion passed." (See, Amended Petition, ¶ 14.)

10. On November 6, 2013, Curtis "Bill" Simon, Sr. also submitted a written statement which read, "I do not remember this motion being made by anyone. It is my understanding that the issue was tabled." (See, Amended Petition, ¶ 15.)

11. Therefore, the October 16, 2013 meeting minutes and Resolution KT14-37 were created fraudulently to appear as if the 2014 Kickapoo Tribal Budget was approved. (*See*, Amended Petition, ¶ 16.)
12. In early 2014, the Kickapoo Tribal Council produced a Kickapoo Tribe in Kansas Overview Budget FY 2014 Projected. (*See*, Amended Petition, ¶ 17.)
13. Contained within that overview, which was fabricated but held out as approved, was projected revenue of \$1,696,000.00 for indirect costs, \$3,203,812.00 for Golden Eagle Casino revenue and \$200,000.00 for Farm revenue. The Kickapoo Tribe Gaming Commission Budget was \$1,100,000.00. (*See*, Amended Petition, ¶ 18.)
14. All budget request forms from every Tribal Department were signed by Bobbi Darnell, Tribal Council Treasurer as the "Budget Officer" and not Chairman Steve Cadue, even though Bobbi Darnell was not the Budget Officer. (*See*, Amended Petition, ¶ 19.)
15. Indirect cost figures contained in the 2014 budgets were significantly inflated. Based on the indirect cost general ledgers produced by the Tribal Accounting Contract Specialist Evva Mayfield, in 2014, the Tribe received \$596,671.30 total in indirect costs. That is over \$1,000,000.00 less than budgeted amount of \$1,696,000.00. If the Tribe would have spent the aggregate of the awarded amounts, they would still only have

received approximately \$700,000.00 based on the Federal grants and contracts. (*See*, Amended Petition, ¶ 20.)

16. When the new Tribal Council convened in October 2014, they discovered over \$500,000.00 in debts and liabilities approved by the Tribal Council but not allocated for in the 2014 projected budget. (*See*, Amended Petition, ¶ 21.)
17. Based on audited figures from the Golden Eagle Casino, completed by the Certified Public Accounting Firm of Joseph Eve, tribal officials knew early in 2014 that the projected revenue would be far less than what was budgeted. The audit was received on March 18, 2014 and shows that the Golden Eagle Casino's Net Operating Revenue was \$2,801,694.00. With 30% being allocated to the per capital account, the Tribe's budgeted amount from the Golden Eagle Casino for both Tribal Operations and Economic Development should have been \$1,961,185.80. (*See*, Amended Petition, ¶ 22.)
18. On February 14, 2014, Kickapoo Tribal Chairman and Budget Officer, Steve Cadue, sent a memo to GEC General Manager, Robert Nanomantube, which cited the requirements of the Kickapoo Budget Ordinance and further gave Mr. Nanomantube notice that the GEC Budget would need to be decreased from \$3,203,812.00 to \$2,003,812.00 for the 2014 budget. (*See*, Amended Petition, ¶ 23.)

19. After learning that the audited revenues had decreased in following the memorandum to G.M. Nanomantube, neither the Budget Officer, Steve Cadue, nor the Chief Financial Officer, Defendant Darnell, made any cuts or decreases to the tribal operating budgets or to the budget of the Kickapoo Tribe Gaming Commission. (*See*, Amended Petition, ¶ 24.)
20. On July 8, 2014, G.M. Nanomantube sent a memorandum to Budget Officer, Steve Cadue, indicating that the 2014 decline in revenues was more severe than in previous years, and these decreases would "mean a reduction in tribal distributions . . ." Once again, the Budget Officer and the Chief Financial Officer continued to operate under the continuing budget without reduction from the routine GEC distribution, without decreasing the budget of the Kickapoo Tribe Gaming Commission, and further, failed to reimburse the GEC for over \$500,000.00 in unpaid insurance premiums the tribal government owed the GEC. In fact, the total 2014 distributions to the Tribe from GEC were \$3,398,977.70. (*See*, Amended Petition, ¶ 25.)
21. Instead of reducing the budgets in accordance with actual revenues, the Tribal Council transferred \$486,560.32 from the Tribe's farm account to the General Fund. Pursuant to the overview budget, only \$200,000.00 in revenue was projected from the farm. According to Tribal Comptroller, Edward Berger, these transfers were completed "at the direction of Tribal Treasurer, Bobbi Darnell, to pay payroll and other daily operational

expenses." No budget reductions were completed at the tribe and the Director of the farm, Wesley Cadue, was not aware that the transfers out of his farm account were occurring. (*See*, Amended Petition, ¶ 26.)

22. The Chief Financial Officer, Defendant Darnell, violated the Kickapoo Budget Ordinance, Article V. As the Chief Financial Officer, she "shall have charge of the administration of the financial affairs of the Kickapoo Tribe and to that end shall supervise and be responsible for the disbursement of all monies and have control over all expenditures to insure that appropriations are not exceeded." She failed to exercise reasonable and ordinary care to insure that appropriations were not exceeded. In fact, appropriations were exceeded to the point where the Tribe could not pay its liabilities and the GEC had to write off over \$500,000.00 that the Tribe could not reimburse for insurance premiums. (*See*, Amended Petition, ¶ 27.)

### **III. ARGUMENTS AND AUTHORITIES**

#### **A. Standards of Review.**

6 KNTC § 11 provides the following: "In all civil cases, the Tribal District Court shall apply: (1) The Constitution, Statutes, and Common Law of the Tribe not prohibited by applicable Federal law, and, if none, then (2) The Federal law including Federal common law, and, if none, then (3) The laws of any State or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Tribe." Accordingly, in some instances, it is appropriate for this Court to consider state and Federal case law in this case.

6 KNTC § 905(a) permits a plaintiff to file a motion for summary judgment: "A party seeking to recover upon a claim . . . may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof." 6 KNTC § 905(c) provides the standards upon which a motion for summary judgment shall be reviewed by the District Court: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The standard for motions for summary judgment established by 6 KNTC § 905(c) is very similar to the motion for summary judgment standard established by Fed. R. Civ. P. 56(a), which provides the following: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for summary judgment established by the Kansas Rules of Civil Procedure in K.S.A. 60-256(c)(2) is also very similar to 6 KNTC § 905(c), and provides the following: "The [summary] judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Accordingly, pursuant to 6 KNTC § 11, Federal case law and Kansas case law regarding motions for summary judgment under F.R.C.P. 56 and K.S.A. 60-256 is applicable, and instructive in this case.

**B. Defendant Darnell Has Failed To File An Answer As Required By The Kickapoo Nation Tribal Code.**

6 KNTC § 112(a)(1) provides the following: "A defendant shall serve his answer within twenty (20) days after the service of summons and complaint upon him . . ." 6 KNTC § 112 permits a defendant to file a motion to dismiss, prior to filing an answer. *See*, KNTC § 112(b). However, if a motion to dismiss is denied, that does not relieve the defendant of the requirement to file an answer. 6 KNTC § 112(a)(1) provides the following: "The service of a motion [to dismiss] permitted under this section alters [the period of time for a defendant to serve an answer] as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion . . . , the responsive pleading shall be served with [sic] ten (10) days after notice of the Court's action . . ."

6 KNTC § 108(b) outlines the requirements of an answer: "A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies." 6 KNTC § 108(d) explains the consequences for failure to properly answer to the allegations and averments asserted in a petition: "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."

Here, Defendant Darnell filed a Motion to Dismiss in response to the Plaintiff's Amended Petition. However, in the Court Minute/Journal Entry filed by the Court on March 11, 2016, the Court denied Defendant Darnell's Motion to Dismiss. Under 6 KNTC § 112(a)(1), Defendant Darnell had 10 days following the Court's March 11, 2016 Court Minute/Journal Entry to file her Answer to the Plaintiff's Amended Petition. However, despite the fact that more than six months have now passed since the Court denied Defendant Darnell's Motion to Dismiss,

and two months have passed since the interlocutory appeal was denied, she has failed to file an Answer to the Amended Petition. Defendant Darnell has never filed any pleading which properly responds to the allegations and averments made in the Amended Petition, as required by 6 KNTC § 108. Accordingly, the allegations and averments made by the Plaintiff against Defendant Darnell in the Amended Petition must be deemed to be admitted.

C. **The Court Should Infer Liability Against Defendant Darnell Due To Her Assertion Of The Right to Remain Silent.**

Plaintiff properly served notice to take the deposition of Defendant Darnell. However, at the hearing on September 9, 2016, Defendant Darnell testified under oath that she would not testify in a deposition in this case, but would instead assert her right to remain silent under the Indian Civil Rights Act. The prohibition against self-incrimination provision of the Indian Civil Rights Act is identical to that found in the Fifth Amendment to the United States Constitution. The Indian Civil Rights Act states the following: "No Indian tribe in exercising powers of self-government shall . . . compel any person in any criminal case to be a witness against himself . . ." 25 U.S.C.A. § 1302(a)(4). Accordingly, case law with regard to the consequences of asserting the Fifth Amendment privilege in a civil case is analogous and applicable here.

The United States Supreme Court has held that "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them; the Amendment 'does not preclude the inference where the privilege is claimed by a party to a Civil cause.'" *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 1558, 47 L. Ed. 2d 810 (1976)(quoting 8 J. Wigmore, Evidence 439 (McNaughton rev. 1961)). As a result of Defendant Darnell refusing to answer questions in a

deposition in this civil case, this Court may draw negative inferences against her, without offending her right to remain silent. *See, Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 286, 118 S. Ct. 1244, 1252, 140 L. Ed. 2d 387 (1998); and *S.E.C. v. Smart*, 678 F.3d 850, 854–56 (10th Cir. 2012).

Furthermore, it is well established by the Tenth Circuit Court of Appeals that a party in a civil lawsuit cannot use the assertion of the Fifth Amendment privilege as both a “sword” and a “shield.” In other words, Defendant Darnell cannot refuse to testify in deposition, and then later withdraw the assertion, or submit other testimony, like an affidavit, in an attempt to defeat a motion for summary judgment filed against her. *See, Smart*, 678 F.3d at 854–56. Accordingly, in response to this motion for summary judgment, Defendant Darnell should be prohibited from withdrawing her right to remain silent and/or submitting testimony or affidavits in an attempt to defeat the motion.

As a result of Defendant Darnell’s assertion of her right to remain silent under the Indian Civil Rights Act, the Court should infer that the allegations made against her in the Amended Petition are undisputed.

**D. Plaintiff Is Entitled To Summary Judgment In Its Favor Against Defendant Darnell For Violations Of The Kickapoo Budget Ordinance And Liability For Civil Penalties.**

As established above, the Court must deem the allegations made by Plaintiff in the Amended Petition as undisputed and admitted. As a consequence, Plaintiff is entitled to summary judgment in its favor against Defendant Darnell, finding that she intentionally violated the Kickapoo Budget Ordinance, and that she is liable for civil penalties.

The undisputed evidence establishes that Defendant Darnell, while serving as Treasurer of The Kickapoo Tribal Council from October 2011 through October 2014, intentionally violated the Kickapoo Budget Ordinance. She did so by fabricating Tribal Council Meeting Minutes and budget documents, signing budget request forms without authorization, mishandling Tribal funds, and otherwise failing to exercise reasonable and ordinary care in exercising her duties under the Kickapoo Budget Ordinance as the Tribal Treasurer and Financial Officer. Article III, Section 6, of the Kickapoo Budget Ordinance requires the Tribal Council to approve the annual budget. However, the undisputed facts establish that the Fiscal Year 2014 Budget was never approved by the Tribal Council, and that Defendant Darnell fabricated Tribal Council meeting minutes to appear as if it was. Additionally, under the Kickapoo Budget Ordinance, Defendant Darnell was the "Chief Financial Officer" as the Tribal Treasurer. However, the undisputed facts establish that she signed budget request forms as the "Budget Officer", even though the Budget Officer, under the terms of the Ordinance, was actually then-Tribal Chairman Steve Cadue. Finally, instead of adjusting and reducing the FY 2014 budget to reflect actual revenues and expenses, Defendant Darnell redirected and misappropriated funds from other Tribal accounts into the General Fund.

As the Chief Financial Officer, the Kickapoo Budget Ordinance required that Defendant Darnell "shall have charge of the administration of the financial affairs of the Kickapoo Tribe and to that end shall supervise and be responsible for the disbursement of all monies and have control over all expenditures to insure that appropriations are not exceeded." (See, Exhibit A, Kickapoo Budget Ordinance, Article V, Section 1.) Furthermore, the Kickapoo Budget Ordinance required Defendant Darnell to "exercise financial budgetary control over each

office, department, and agency and shall cause separate accounts to be kept from the items of the appropriation contained in the budget, each of which account shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it, and the unencumbered balance.” (See, Exhibit A, Kickapoo Budget Ordinance, Article V, Section 1.) The facts establish that Defendant Darnell intentionally violated her duties and responsibilities under the Kickapoo Budget Ordinance, and otherwise violated the Ordinance.

Article VII, Section 2, of the Kickapoo Budget Ordinance is entitled "Civil Penalty" and provides the following: "Any person who intentionally violates the provisions of these standard procedures shall be required to pay civil penalty [sic] of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00). Jurisdiction is hereby conferred on the Kickapoo District Court to enforce the provisions of these standard procedures." As a result of the undisputed facts in the case, Plaintiff is entitled to summary judgment against Defendant Darnell, finding that Defendant Cadue intentionally violated the Kickapoo Budget Ordinance, and that she is liable for civil penalties as a result.

E. **The Amount Of Civil Penalties That Defendant Darnell Is Liable For Must Be Determined By The Court.**

Because summary judgment against Defendant Cadue is appropriate as to her liability for civil penalties under the Kickapoo Budget Ordinance, the only remaining question is the amount of the judgment for civil penalties that should be entered against Defendant Darnell. Plaintiff's Amended Petition seeks a civil penalty against Defendant Cadue as provided in Article VII, Section 2 of the Kickapoo Budget Ordinance. That section states that a person who violates the Kickapoo Budget Ordinance shall be required to pay a civil penalty of "not less than One

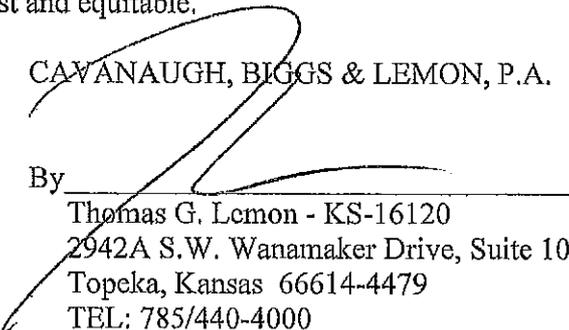
Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500)." Accordingly, the specific amount of the civil penalty must still be decided by the Court.

6 KNTC § 905(d) provides the procedure under which the Court can determine the damages a defendant is liable for after entering summary judgment for liability against a defendant. That section states that, if after summary judgment is entered against a party, the case has not been fully adjudicated, then the Court shall direct further proceedings, as are needed. *See*, 6 KNTC § 905(d). Accordingly, after entering summary judgment against Defendant Darnell, finding that she intentionally violated the Kickapoo Budget Ordinance, and finding that she is liable for civil penalties, the Court should set this matter for a hearing to determine the specific amount of civil penalties that Defendant Darnell should be ordered to pay.

#### **IV. CONCLUSION**

For the reasons set forth above, Plaintiff The Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas, respectfully requests that summary judgment be entered against Defendant Bobbi Darnell finding that she intentionally violated the Kickapoo Budget Ordinance and that she is liable for civil penalties pursuant to Article VII, Section 2 of the Kickapoo Budget Ordinance in an amount to be determined by the Court, and for such other and further relief as the Court deems just and equitable.

CAVANAUGH, BIGGS & LEMON, P.A.

By 

Thomas G. Lemon - KS-16120  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, Kansas 66614-4479  
TEL: 785/440-4000  
FAX: 785/440-3900  
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26 day of September, 2016, he served a true and correct copy of the above and foregoing document by:

- United States mail, first class postage prepaid  
 Facsimile transmission in accordance with Kansas Supreme Court Rule 119 to the fax number listed below  
 E-Mail transmission in accordance with Kansas Supreme Court Rule 122 to the e-mail address listed below  
 Hand delivery

addressed as follows:

Napoleon Crews  
Crews Law Firm  
3300 Clinton Parkway Court, Ste. 010  
Lawrence, KS 66047  
ATTORNEYS FOR DEFENDANTS

CAVANAUGH, BIGGS & LEMON, P.A.

By 

Thomas G. Lemon - KS-16120  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, Kansas 66614-4479  
TEL: 785/440-4000  
FAX: 785/440-3900  
ATTORNEYS FOR PLAINTIFF

**STANDARD PROCEDURES FOR THE KICKAPOO TRIBE IN KANSAS FOR  
PREPARING, ENACTING, AND ADMINISTERING AN ANNUAL BUDGET.**

**ARTICLE I  
DEFINITIONS**

- SECTION 1. "BUDGET YEAR" means the fiscal year for which a budget is made.
- SECTION 2. "CURRENT YEAR" means the fiscal year in which a budget is prepared and adopted; i.e., the fiscal year next preceding the budget year.
- SECTION 3. "PREVIOUS YEAR" means the last complete fiscal year before the current year.
- SECTION 4. "BUDGET OFFICER" means the Tribal Chairperson
- SECTION 5. "CHIEF FINANCIAL OFFICER" means the Tribal Treasurer
- SECTION 6. "BUDGET PERIOD FOR THE GENERAL FUND" means January 1 to December 31.
- SECTION 7. "FINANCE COMMITTEE" means the standing committee established by the tribal council to oversee financial affairs of the tribal council.

**ARTICLE II  
PURPOSE, POWERS, DUTIES, AND FISCAL YEAR**

**SECTION 1. PURPOSE**

The purpose of these standard procedures is to adopt rules governing the Kickapoo Tribe in Kansas in its proceedings for administering the financial affairs of the Tribal Council, and to establish a standard procedure for: (1) the making and administration of budgets, (2) placing responsibility for the tasks related to budget preparation and administration, (3) the determination of net revenue from any gaming activities, (4) taxes and other revenues in such manner that budgets may be balanced on the basis of actual revenues and obligations within the budget period, (5) and the establishment of appropriations, the payment of debt, and the control of other expenditures. Its provisions are intended to enable the Tribe to make financial plans for both current and capital expenditures, to insure that executive staffs administer their respective functions in accordance with these plans, and to permit tribal members, taxpayers and other investors to form intelligent opinions based on sufficient information as to the financial policies and administration of the tribe. For the accomplishment of this purpose, the provisions of these standard procedures shall be broadly construed, and shall be in effect until repealed or amended. These standard procedures may be repealed or amended by a majority vote of the Tribal Council of the Kickapoo Tribe in Kansas in the same manner as required for the adoption of an ordinance except that in no case may a vote be taken on amendment or repeal of this ordinance at the meeting at which it is first proposed.

**SECTION 2. POWERS AND DUTIES**

Within the provisions and for the purpose of these standard procedures, officers and employees shall have the power and be subject to the duties expressly stated or necessarily implied.

### SECTION 3. FISCAL YEAR

The fiscal year shall begin on the first day of January of each year.

## ARTICLE III PROCEDURE FOR ADOPTION OF BUDGET

### SECTION 1. PREPARATION AND SUBMISSION OF BUDGET

The budget officer, at least 180 days prior to the beginning of each fiscal year, shall submit to the Tribal Council of the Kickapoo Tribe in Kansas a budget and an explanatory budget message in the form and with the contents provided by Article IV. For such purpose, not less than 180 days prior to the beginning of the fiscal year, he/she or an officer designated by him/her shall obtain from the head of each office, department, or agency estimates of revenues and expenditures of that office, department, or agency detailed by: (a) service activities within each department, (b) object of expenditure—(1) personal services, (2) contractual services, (3) materials and supplies (4) other expenses, (5) capital outlay, (6) debt service—and such other supporting data as he may request; together with a list of all new programs and capital projects pending or which such department head believes should be undertaken (a) within the budget year, and (b) within the five next succeeding years. In preparing the budget, the budget officer shall review the estimates, shall hold conferences with department heads thereon, and may review the estimates as he may deem advisable. He also shall obtain from the responsible officer or officers or develop on his own initiative estimates of anticipated state and federal grants and require matching funds where applicable.

The annual budget process contained in Appendix A shall be followed in the preparation of the budget.

### SECTION 2. BUDGET, A PUBLIC RECORD

The proposed budget and budget message and all supporting schedules shall be a public record in the office of the Secretary, open to inspection by tribal members. The budget officer shall cause the proposed budget to be printed or otherwise reproduced and sufficient copies thereof made available for the use of all offices and departments and for the use of interested persons and tribal organizations.

### SECTION 3. PUBLICATION OF NOTICE OF PUBLIC HEARING

At the meeting of the Kickapoo Tribe in Kansas at which the budget message and budget are submitted, the Kickapoo Tribe in Kansas shall determine the place and time of the public hearings on the budget, and shall cause to be published a notice of the places and times, not less than seven days nor more than twenty-one days before the public hearings.

#### SECTION 4. PUBLIC HEARING ON BUDGET

At the time and places so advertised, or at any time and place to which such public hearings shall from time to time be adjourned; the Tribal Finance Committee shall hold public hearings on the budget as submitted, at which all interested persons shall be given an opportunity to be heard, for or against the revenue estimates or any proposed appropriation therein.

#### SECTION 5. FURTHER CONSIDERATION OF BUDGET

After the conclusion of such public hearing, the tribal council may insert new items or may increase or decrease the items of the budget, except items in proposed expenditures fixed by law or prescribed by subsections (a), (b), and (c) of Article IV, Section 9 of these standard procedures, but where it shall increase the total proposed expenditures, it shall also increase the total anticipated revenue at least to equal such total proposed expenditures.

#### SECTION 6. ADOPTION OF BUDGET

The budget shall be adopted by the favorable votes of not less than a majority of all the members of the tribal council at a meeting duly called and convened, in which a quorum is present.

#### SECTION 7. DATE OF FINAL ADOPTION; FAILURE TO ADOPT

The budget shall be finally adopted not later than the thirty (30) days, prior to the beginning of the fiscal year. Should the governing body take no final action on or prior to such day, no expenditure may be made for any purpose except salaries until the budget has been finally adopted by the tribal council.

#### SECTION 8. EFFECTIVE DATE OF BUDGET, CERTIFICATION, COPIES

Upon final adoption, the budget shall be in effect for the budget year. A copy of the budget, as finally adopted, shall be certified by the budget officer and filed in the office of the chief financial officer. The budget, so certified, shall be printed or otherwise reproduced; and sufficient copies thereof should be made available for the use of all offices, departments and agencies, and for the use of interested persons and civic organizations. A summary of the budget shall be published for the tribal membership.

## SECTION 9. BUDGET ESTABLISHES APPROPRIATIONS

From the effective date of the budget, the several amounts stated therein, as proposed expenditures shall be and become appropriated to the several objects and purposes therein named.

## ARTICLE IV CONTENTS OF BUDGET MESSAGE, SCOPE, AND FORM OF BUDGET

### SECTION 1. BUDGET MESSAGE: CURRENT OPERATIONS

The budget message submitted by the budget officer to the tribal council shall be explanatory of the budget; shall contain an outline of the proposed financial policies for the fiscal year; and shall describe in connection therewith the important features of the budget plan. It shall set forth the reasons for important or significant changes from the current year in appropriation and revenue items and shall explain any major changes in financial policy.

### SECTION 2. BUDGET MESSAGE: CAPITAL IMPROVEMENT

As part of the budget message, with relation to the proposed expenditures for the budget year for capital projects, stated in the proposed budget, the budget officer shall include a statement of pending capital projects and proposed new capital projects, relating the respective amounts proposed to be raised during the budget year by appropriations from: (1) estimated net revenues received from gaming activities for the budget year, (2) the issuance of bonds, (3) state of federal grants, (4) loans or (5) other sources.

The budget officer shall also include in the message, or attach thereto, a capital program of proposed capital projects for each of the five fiscal years next succeeding the budget year, together with his/her comments thereon and any estimates of costs prepared by the department of public works or other office, department, or agency.

### SECTION 3. BUDGET MESSAGE: SUPPORTING SCHEDULES

Attached to the budget message shall be such supporting schedules, exhibits, and other explanatory material, in respect to both current operations and capital improvements, as the budget officer shall believe useful to the tribal council.

### SECTION 4. BUDGET

The budget shall provide a complete program and financial plan for all funds for the budget year. It shall contain in tabular form for each fund:

- (a) a general summary
- (b) detailed estimates of all anticipated revenues applicable to proposed expenditures
- (c) all proposed expenditures

The total of such anticipated revenues shall equal the total of such proposed expenditures.

#### SECTION 5. ANTICIPATED REVENUES

Anticipated revenues shall include net revenue from any gaming activities, federal or state grants and contracts, loans, license fees, taxes or other sources and shall be classified in accordance with the chart of accounts of the tribal council. Each tribal enterprise shall furnish no later than 180 days after the end of the enterprise's fiscal year, an estimate of available surplus funds for the tribe's next fiscal year to be budgeted and transferred as sources of revenue from the enterprise by the chief financial officer for purposes of budget preparation. Should said enterprises anticipate a deficit from operations such notice shall be furnished to the chief financial officer when the enterprise management has knowledge of said deficits or projected losses from operations. The transfer of funds from surplus operations of an enterprise shall be in equal monthly installments payable to the Kickapoo Tribe in Kansas, General Fund. Periodic adjustments between anticipated revenue estimates given by tribal enterprise management and actual audited amounts can only be adjusted for surplus estimates. Such additional surplus revenue based upon audited financial statements shall result in a payable on the accounting records of the enterprise fund and an accounts receivable on the accounting records of the tribe's general fund.

#### SECTION 6. ANTICIPATED REVENUES, COMPARISON WITH OTHER YEARS

In parallel columns, opposite the several items of anticipated revenue, there shall be placed: (a) the amount of each such item actually received during the next preceding fiscal year, and (b) the total of the amount of each item actually received to the time of preparing the budget, plus anticipated receipts for the remainder of the current fiscal year estimated as accurately as may be, and (c) the amount of each item anticipated to be received during the budget year estimated as accurately as may be.

#### SECTION 7. FUND BALANCE

The fund balance available for appropriations shall be limited to the amount by which liquid or current assets are estimated to exceed liabilities at the beginning of the budget year. This estimate shall be reviewed by the budget officer at soon as practical after the end of the current fiscal year when the actual "Fund Balance" is determined. At this time, the estimates of revenue and authorized appropriations shall be revised if necessary.

## SECTION 8. ANTICIPATED SURPLUS FROM TRIBAL UTILITY OR OTHER TRIBAL ENTERPRISES

The anticipated revenue and proposed expenditures of each utility or other tribal enterprises owned or operated by the tribe shall be stated in a separate section of the budget, each bearing the name of the utility or enterprise, an anticipated surplus, (if legally available for general purposes). To the extent such surplus is to be used to support budget operations, it shall be stated as an item of revenue in the budget.

## SECTION 9. PROPOSED EXPENDITURES

The proposed expenditures shall be itemized as set out in Article III, Section 1, and each item numbered in accordance with the classification system of the tribal council. Separate provision shall be included in the budget for at least:

- (a) interest, amortization, and redemption charges on bonds outstanding;
- (b) other statutory expenditures;
- (c) any budgetary deficit of current year;
- (d) administration, operation, and maintenance of each office, department, and service, function or activity including the negotiated indirect cost pool;
- (e) contingent expense in an amount not more than five percent of the total amount stated pursuant to subsection "d" of this section; and,
- (f) expenditures proposed for capital projects.

## SECTION 10. PROPOSED EXPENDITURES, COMPARISON WITH OTHER YEARS

In parallel columns, opposite the several items of proposed expenditures, there shall be placed; (a) the amount of each such item actually expended during the next preceding fiscal year, and (b) the total of the amount actually expended to the time of preparing the budget plus the expenditures for the remainder of the current fiscal year estimated as accurately as may be, and (c) the amount of each item to be appropriated for the budget year.

## SECTION 11. BUDGET SUMMARY

At the front of the budget there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, stating separately the amount to be raised by taxes, and by departments and kinds of expenditures, in such a manner as to present to taxpayers a simple and clear summary of the detailed estimates of the budget.

**ARTICLE V**  
**ADMINISTRATION OF BUDGET, FINANCIAL CONTROL**

**SECTION 1. APPROVAL OF EXPENDITURES**

The chief financial officer shall have charge of the administration of the financial affairs of the Kickapoo Tribe and to that end shall supervise and be responsible for the disbursement of all monies and have control over all expenditures to insure that appropriations are not exceeded. He/she shall exercise financial budgetary control over each office, department, and agency and shall cause separate accounts to be kept for the items of appropriation contained in the budget, each of which account shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it, and the unencumbered balance. The same classification and numbering system used in the budget and required by Article IV, Section 9, shall be used. Unless he/she shall certify that there is a sufficient unencumbered balance available, no appropriation shall be encumbered and no expenditure shall be made.

**SECTION 2. WORK PROGRAMS, ALLOTMENTS**

Before the beginning of the budget year, the head of each office, department or agency shall submit to the budget officer, at the time required by him/her, a work program for the year, which program shall show the required allotments of said appropriations for such office, department, or agency, by quarterly periods, for the entire budget year. The budget officer shall review the requested allotments in the light of the work program of the office, department, or agency concerned and may revise, alter, or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total appropriation available to said office, department, or agency for the budget year. The budget office shall certify a copy of the allotments approved to the chief financial officer who shall authorize all expenditures for the offices, departments, and agencies to be made from the appropriations on the basis of approved allotments and not otherwise. The approved allotment may be revised during the budget year in the same manner as the original allotment was made. If, at any time during the budget year, the budget officer shall ascertain that the available income, plus balances, for the year will be less than the total appropriations, he shall reconsider the work programs and allotments of the several offices, departments, and agencies and shall revise the allotments so as to forestall the making of expenditures in excess of said income.

**SECTION 3. TRANSFERS OF APPROPRIATIONS**

The budget officer may at any time transfer any unencumbered appropriation balance or portion thereof between general classifications of expenditures within a department, and service, function, or activity. At the request of the budget officer and within the last three months of the budget year, the tribal council may by resolution (and consistent with applicable federal laws) transfer any unencumbered appropriation balance or portion thereof from one office, department, or agency to another. No transfer shall be made from the appropriations required by subsections (a), (b), and (c) of Article IV, Section 9, of this ordinance.

#### SECTION 4. WHEN CONTRACTS AND EXPENDITURES PROHIBITED

No office, department, or agency shall, during any budget year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purpose in excess of the amounts appropriated for the general classification of expenditures pursuant to these standard procedures. Any contract, verbal or written, made in violation of these standard procedures shall be null and void.

#### SECTION 5. APPROPRIATIONS LAPSE AT END OF YEAR

All appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully encumbered.

#### SECTION 6. USE OF GENERALLY ACCEPTED GOVERNMENTAL ACCOUNTING PRINCIPLES OR FUND TYPES

As required by generally accepted governmental accounting principles, the chief financial officer shall maintain all tribal accounting records in accordance with the standards promulgated by the Government Accounting Standards Board (GASB). All accounting records shall be kept on a computerized fund accounting system selected and purchased by the chief financial officer. All financial transactions of the tribe shall be recorded in one or more of the following fund types: (1) General Fund (2) Special Revenue Funds (3) Debt Service Funds (4) Capital Projects Funds (5) Enterprise Funds (6) Internal Service Funds and (7) Trust and Agency Funds.

### ARTICLE VI EMERGENCY APPROPRIATIONS AND BORROWING

#### SECTION 1. EMERGENCY APPROPRIATIONS

At any time in any budget year, the tribal council may, pursuant to this section, make emergency appropriations to meet a pressing need for tribal council expenditures, for other than a regular or recurring requirement, to protect the public health, safety, or welfare. Such appropriation shall be by resolution adopted by the favorable vote of not less than a majority of the members of the tribal council, and shall be made only upon recommendation of the budget officer. The total amount of all emergency appropriations made in any budget year shall not exceed the amount of unanticipated actual revenue in excess of the budget estimates, plus transfers from other appropriations.

## SECTION 2. BORROWING IN ANTICIPATION OF TAXES

In any budget year in anticipation of the collection of the revenues for the budget year but not in excess of 10 percent of such revenue then uncollected, the tribal council may by resolution borrow money and issue negotiable notes on behalf of the Kickapoo Tribe in Kansas.

## ARTICLE VII REPORTS, CIVIL PENALTY, SEVERABILITY

### SECTION 1: Reports

The budget officer shall, within 15 days after the end of each monthly report to the tribal council on the status of the various programs authorized. The report shall include a tabular statement comparing the receipts to date by source with the revenue estimate and a tabular statement indicating for each appropriation the amount originally appropriated, the amount expended or encumbered to date, and the available balance. Within 45 days of the end of the fiscal year, sufficient copies of the final report shall be made available for the use of all offices, departments, and agencies and for the use of interested persons and civic organizations.

### SECTION 2: Civil Penalty

Any person who intentionally violates the provisions of these standard procedures shall be required to pay civil penalty of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500). Jurisdiction is hereby conferred on the Kickapoo District Court to enforce the provisions of these standard procedures.

### SECTION 3: Severability

If any provision of these standard procedures or the application thereof to any person circumstance is held invalid, the invalidity shall not affect other provisions or application of these standard procedures which can be given effect without the invalid provision or application, and to this end the provisions of these standard procedures are severable.

## APPENDIX A

The following annual budget process is designed to meet the requirements of the Tribal Constitution and bylaws Article V, Section 1 (f) and budget ordinance of the tribal council. The process is intended to prescribe the following actions to take place by specified deadlines:

### On or before May 1

The Tribal Chairperson (Budget Officer) must prepare a budget calendar and procedures for the preparation of the annual tribal budget.

### On or before July 1

On or before July 1, the following actions must take place:

\* All programs, offices, departments boards, commissions, and other spending agencies must prepare and submit estimates of their revenues and expenditures to the tribal chairperson (budget officer) and tribal council for the ensuing fiscal year

- The estimates of expenses must be based upon specific work programs and classified by funds, character, and object of expenditures.

- The estimates of revenues, must be classified by funds and sources of income.

\* Changes in ordinances establishing taxes, fees, charges, and other types of revenues may be proposed.

\* The Tribal Chairperson must develop-range plans for capital improvements and must prepare a six-year capital improvement program.

\* The Tribal Treasurer (chief financial officer) must certify to the Tribal Chairperson (budget officer) and Tribal Council the amount of money available to the tribal government to pay the interest on general obligation bonded indebtedness and to provide for the debt retirement fund

### On or before July 15

The Tribal Treasurer (chief financial officer) shall approve an estimate of tribal funds that will be available for distribution to programs. This amount shall be adjusted upon the receipt of audited figures

**On or before September 15**

The Tribal Chairperson (budget officer) must brief the tribal council on the tentative revenue and expenditure plans for the ensuing year and any major program changes.

Budget request from tribal departments will be considered by the tribal council upon receipt of a statement of need, a budget, service area, eligibility requirements, and a current or proposed program evaluation criteria.

**On or before the third Monday in October**

After receiving and considering Tribal Council's recommendations, the Chairperson (budget officer) must submit to the tribal council a proposed budget that must include, but need not be limited to:

- \* A general statement describing the important features of the budget.
- \* Statements by funds showing estimates of expenditures, receipts, and opening and closing balances come with the last completed fiscal year and the current year.
- \* Statements of expenditures and work programs of the various programs, offices, departments, boards, commissions and other spending agencies.
- \* The amount to be obligated to pay interest on general obligation bonded indebtedness and to provide for the debt retirement fund.
- \* The amounts to be expended during the ensuing year for capital improvement projects and the sources of revenue for financing such projects

Revenue estimates must be based on already enacted ordinances..

Expenditures must not exceed the estimated opening balances and anticipated income.

In the General fund, the budget estimates must include an amount as a year -end closing balances that cannot be expended except for emergencies. Those expenditures must be approved by majority vote of the council.

In the General Fund, the budget estimates must include an amount not less than two percent of the total estimated expenditures for the payment of any casualty, accident, or unforeseen contingency.

**On or before the fourth Monday in October**

The Tribal Council must publish a notice showing that the proposed budget is available for inspection

The Tribal Council must hold a public hearing on the proposed budget.

**On or before the first regular Council meeting in November**

The Tribal Council may revise, alter, increase, or decrease any items in the Tribal chairperson's (budget officer's) proposed budget, by majority vote of the members of the tribal council.

**On or before close of business on the Friday immediately following the first regular Council meeting held in November**

The tribal chairperson (budget officer) must submit to council a list of the amendments and items revised, altered, increased, or decreased, stating which of the amendments he accepts or rejects.

**On or before the Second regular Council meeting in November**

Tribal Council may override the Chairperson's (budget officer's) rejection of any of its proposed amendments by a vote of at least two thirds of its members.

Council may adopt a budget. If the tribal council fails to adopt a budget by the required date, the Tribal Chairperson's proposed budget, with any amendments enacted by two thirds vote of the council members becomes the official budget

**On or before the fourth Monday in November**

The tribal council must enact an ordinance making appropriations for the ensuing fiscal year.