

To: Aisha Uwais-Savage Concha  
Rosebud Sioux Tribe Attorney General

From: Calvin "Hawkeye" Waln, Jr.  
Rosebud Sioux Tribal Council Representative

Date: February 6, 2014

Subject: Duties of the Rosebud Sioux Tribe Attorney General

Madam Attorney General,

I want this memorandum to be a matter of record and these complaints addressed in writing in accordance to Tribal Law and Tribal Legislative Laws enacted by Ordinances, Resolutions, and Instructions by the Rosebud Sioux Tribal Council. My complaints are in reference to RST Ordinance 88-01 Rosebud Sioux Tribal Attorney General Ordinance, RST Resolution 2013-307 employing you as the RST Attorney General, P.L. 93-638 Self Determination Contracts CTAO7T345-59 JDC and Adult Corrections, and A13AV00113 Law Enforcement Services.

You have reported in various committees such as the RST Judiciary and RST Budget and Finance Committees that you are the Chief Law Enforcement Officer. In RST Ordinance 88-01 and in your employment contract that mirrors RST Ordinance 88-01, it states that you are the Chief Judicial Officer of the Rosebud Sioux Tribe. In RST Ordinance 88-01, Section 8, Duties and Responsibilities A) As Chief Judicial Officer for enforcement of Tribal Law represent the Rosebud Sioux Tribe on Law Enforcement legal issues to which the Tribe is a party provided the Tribal Council shall approve any action prior to any filing in any court(s) by the Rosebud Sioux Tribe Attorney General, and supervise the and direct the Rosebud Sioux Tribe Department of Justice. The Justice Department is defined as the Tribal Court in the RST Constitution and By-Laws.

B) As Chief Judicial Officer for the enforcement of Tribal law of the Rosebud Sioux Tribe and shall enforce tribal criminal, tribal civil, treaty and federal Indian law; as well as direct and work in conjunction with the RSTC Prosecutor's office, the RST Criminal Investigations department and RST Police Department.

This section defines you evaluating elements of an alleged crime named above and the evidence correspondence that are relevant. The RST Prosecutor's Office works with Law Enforcement to make sure everything is in place for your final evaluation and approval on potential Federal Criminal cases. The RST Chief Prosecutor should be working hand in hand with RST Law Enforcement regarding issues that are not being met on a daily basis. For example, the South Dakota Attorney General Marty Jackly does not interject himself into the day-to-day operations of SD Department of Criminal Investigations or the SD Highway Patrol. Also, the United States Attorney General Eric Holder does not mingle in the day-to-day operations of the FBI or other Federal Law Enforcement Agencies. In the position of Attorney General, Mr. Holder and Mr. Jackly are responsible to protect, ensure, and address legal issues to make sure the legal process and procedures of the law enforcement are adhered to.

C) As Chief Judicial officer for the enforcement of Tribal law consult, collaboration and work with the United States Attorney to enforce law and order on the Rosebud Reservation; also to promote Tribal Criminal Jurisdiction, and shall review and supervise the gathering of evidence by law enforcement officers to make sure each case is promptly and fairly presented to the proper Tribal or Federal Court.

A question I asked you in your interview and after your employment was approved, was if you had ever drafted or assisted in drafting the Law and Order Act. You replied that you had drafted and implemented the Tribal Law and Order Act in your other employment within Indian County. You assured us that you would bring the Rosebud Sioux Tribe into compliance with the Tribal Law and Order Act for the implementation.

In the above paragraph, I covered the fact that in your duties as the Attorney General the scope of your responsibilities are limited to examination of the evidence in the file before the case is forwarded to the U.S. Attorneys Office.

D) Protection of Tribal Members and the interests of the Rosebud Sioux Tribe in Tribal, State, and Federal courts in litigations and cases involving Criminal Law, Federal Civil Rights, Juvenile Justice and Indian Law.

This section pertains to your responsibility as the Attorney General in protecting Tribal Members against inefficiency and selective enforcement. You are to evaluate if a case warrants Tribal or Federal court jurisdiction. The Rosebud Sioux Tribe has a Tribal Court and is under concurrent jurisdiction. Rosebud Sioux Tribal sovereignty is exercised by having legal issues handled in Tribal Court when possible rather than sent to Federal Court.

E) Responsibility for overall enforcement of Tribal Civil regulatory authority, and other duties as assigned by the Tribal Council.

The Tribe has identified very pressing issues. Tribal Council Representatives have expressed concern and a need for action regarding land issues, the Cherry Todd lawsuit, and Inadequate Health Care issues with IHS.

It is the duty of the Tribal Council to direct duties as prescribed in this Ordinance 88-01 and your contract so issues and injustices to our membership are properly addressed.

Where do you see in RST Ordinance 88-01 (Tribal Law) that you take your direction from the Tribal President? The Ordinance clearly states that the Tribal Council assigns duties and direction to you. The Rosebud Sioux Tribe has an Attorney General and a Tribal Attorney. You both need to make yourselves available to the Tribal Council in the three scheduled Tribal Council meetings. The Tribal Council should not have to make a special request for your or the Tribal Attorney's attendance in a Tribal Council meeting. You should be present at each one. Recently, the Tribal Council passed a motion to take the lead on the Cherry Todd case. On January 31, 2014 RST Tribal Utility Commission held a public hearing regarding Cherry Todd Electric in council chambers. Cherry Todd had an attorney present taking notes and the Rosebud Sioux Tribe had no legal representation present at the hearing to stop the hearing so the Cherry Todd Attorney could not take notes and ask questions in order to proceed in their stand against not having to follow Tribal Law.

The RST Tribal Council has hired Directors to manage the programs on a daily basis and with the above named programs I'm very confident that we have competent individuals in these positions. They are trained and certified on how to conduct the program. I question the day-to-day micromanagement you've taken upon yourself to administer that does not fall within the scope of your duties, nor are they duties assigned to you by Tribal Council. In your role as Attorney General, if the Program Directors have legal questions they come to you for legal assistance. It appears as though the Tribal President has allowed you to micromanage these programs, and if that is the case, understand that he does not have the authority to give you direction. The Tribal Council directs you, per RST Ordinance 88-01. An RST Ordinance supersedes a contract if the contract is not consistent with Tribal Law then the employment contract needs modified to come in compliance with the Ordinance (Tribal Law). In your contract Section 15: Other Terms and Conditions of Employment (1) covers this issue.

Of further concern is that you have recently directed Law Enforcement Administrators not to report to the RST Judiciary Committee. You have told them that the Judiciary Committee is not recognized in the P.L. Self Determination Contracts so they do not report to the RST Judiciary Committee. As a member of the Tribal Council and a member of the Judiciary Committee I am asking from where you are taking your direction? I question your knowledge of Tribal Legislative Law in place. Your action in this matter is blatant disrespect to Tribal Legislative

Law and insubordination to the Governing Body, the Tribal Council who delegates its authority to sub-ordinate committees.

The RST Judiciary Committee Ordinance (Tribal Law) 80-03, Section 8. Duties of the Committee – The Judiciary Committee shall recommend all proposed legislation, messages, petitions, memorials and other matters relating to the following subjects: I. Tribal jails, Tribal Police, Bureau of Indian Affairs police and the performance thereof.

In the P.L. 93-638 Self Determination Law Enforcement and Corrections Contract page 18 clearly states, Duties and Responsibilities, abide to applicable Tribal Resolutions and Ordinances enacted by the Rosebud Sioux Tribal Council. RST Ordinance 80-03 the Judiciary Committee was enacted by the Tribal Council and amended January 19, 2012.

To further provide legal grounds that point to your insubordinate directive and action, I reference the RST Governmental Affairs Committee Ordinance 80-02, Section 8. Duties of Committee – The Governmental Affairs Committee shall be referred all proposed legislation, message, petitions, memorials and other matters relating to the following subjects: D. Tribal law as it relates to state and federal policy and H. Relations of the Rosebud Sioux Tribe with state and federal governments.

The P.L. 93-638 Self Determination Contracts are a government to government policy and if requested, Directors of these contracts will report to the Governmental Affairs Committee as well as the Judiciary Committee. The RST Police Commission is included as they are enacted by Tribal Ordinance.

I firmly believe you are outside your scope of numerous RST Ordinances and working outside the scope of your contract while failing to administer your stated duties. You are not the Chief Law Enforcement Officer; you are the Chief Judicial Officer and there is a difference and a fine line between your role and a Director's role and scope of work. Your conduct and blatant disregard and disrespect to Tribal Ordinances and Federal Law are legally unethical and insubordinate. When a Committee directs a report or information in a duly called meeting whether open session or executive session that Director is compelled by Tribal Law to report. You are directing Law Enforcement Administrators to be insubordinate. Further, you are placing their integrity and careers that they worked to obtain through higher education and training in jeopardy.

In closing, I plan to address this issue not only at a committee level but at the Tribal Council level as it is very serious in nature. Thank you for your time and attention regarding this matter.

CC: RST Tribal Council Representatives  
RST Tribal President, Cyril Scott