

Corporate Governance of Tribally Owned Enterprises

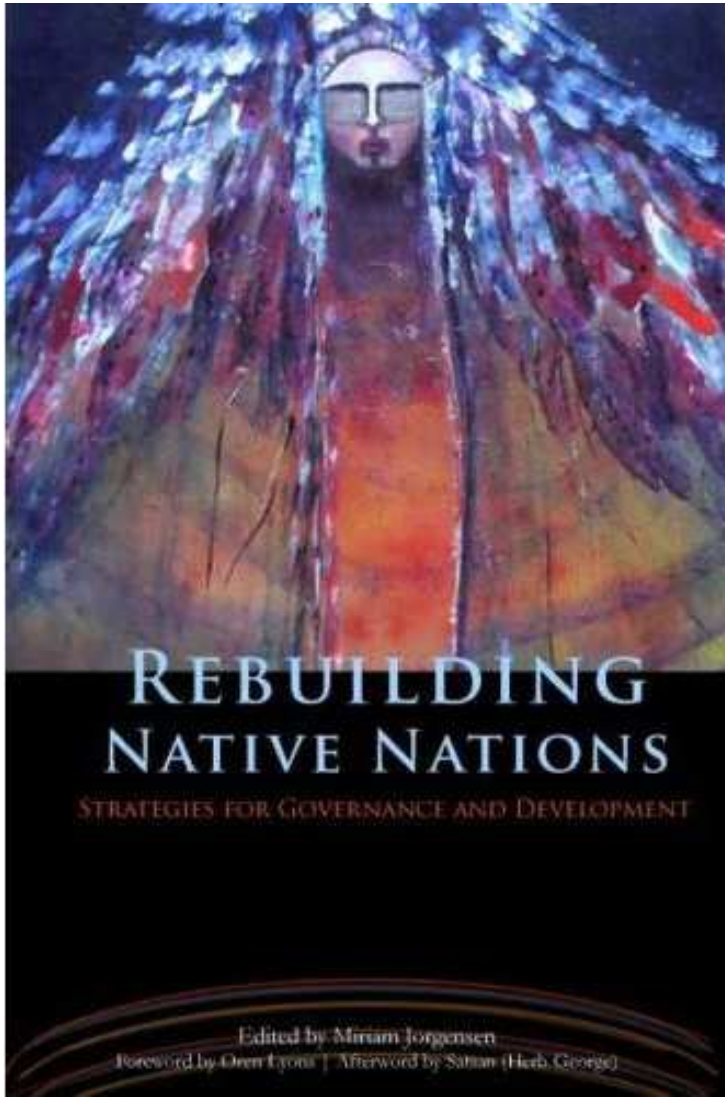
*A Presentation to the
Second Annual Great Lakes
Tribal Economic Development Symposium
Mount Pleasant, MI*

THE TAYLOR POLICY GROUP



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10.31.07

Rebuilding Native Nations



“Managing the boundary between business and politics: Strategies for improving the chances for success in tribally owned enterprises,” by Kenneth W. Grant & Jonathan B. Taylor

In *Rebuilding Native nations: Strategies for governance and development*, Miriam R. Jorgensen, editor.

Tucson, AZ: University of Arizona Press, 2007.

Indian Tribes Have Distinct Advantages

- Sole source federal contracting under 13 CFR 124 (a.k.a. “section 8(a) status”)
- Tax exempt status of tribal enterprises under IRS, Revenue Rule 94-16.
- Small & disadvantaged business status under Certain federal accelerated depreciation and employment tax credits.
- Grant, loan, loan guarantee, and tribal governmental program funding.
- Regulatory flexibility.

Yet Indian economic development remains a challenge in many places. Why?

Corporate Governance

- The systems of contracts, laws, and organizational designs under which owners of assets convey responsibility for developing those assets to a group of overseers and professional managers and then monitor and influence the ultimate performance of those assets.
- All kinds of organizations depend upon sound systems of governance for their effective functioning:
 - Cooperatives (Ocean Spray, Associated Press)
 - Shareholder corporations (IBM, Sealaska)
 - Board-managed non-profits (United Way, Boy Scouts)
 - Government-owned companies (Amtrak, Ho-Chunk Inc.)

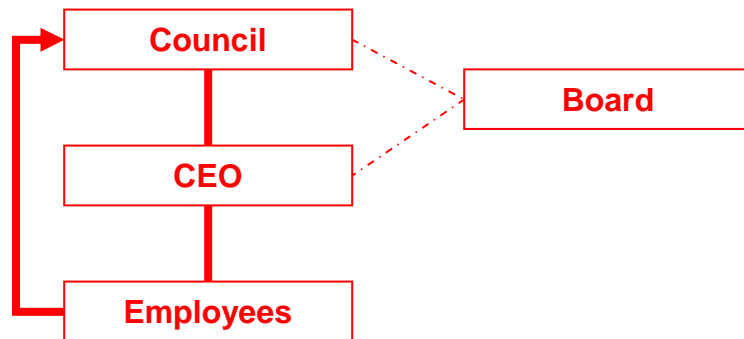
A Poorly Managed Tribal Business

- A western casino corporation facing strong competition.
- Personnel issues kept arriving at tribal council: “We own this company. It exists for us, and I deserve my job back!”
- Corporation would not advance tribal strategic objectives nor report to tribe regularly.
- Tribal council member sold under-performing trucking business to casino corporation.
- A gradually weakening board of directors:
 - Outsider members acquired consulting contracts with the tribe.
 - Council’s board members repeatedly viewed as “brainwashed.”
 - Discretion over capital investing (<\$250,000) and salary-setting taken away by tribal council.
- CEO: “My job is to run political interference.”

Result: Tribal-member CEO and excellent VPs all left in frustration.

Two Models of Nation-Owned Business

The Council-Run Model

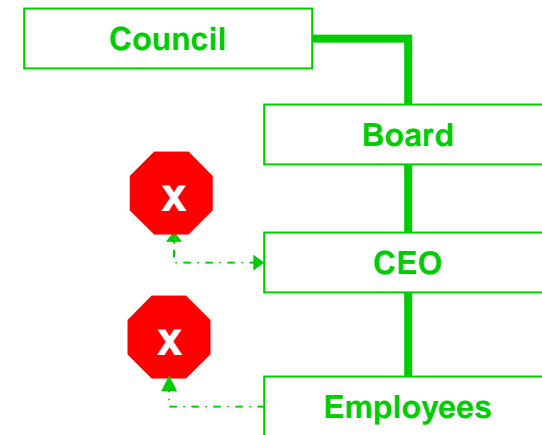


The Council sits as the “board” over the enterprise and is in frequent contact with the CEO.

Employees can approach Council directly about Corporation matters.

The board (if it exists) advises Council and the CEO about strategy but has no power to act on important corporate policy issues.

The Separated Model



The Council sets the strategic direction, and it leaves execution to the Board and day-to-day management to the CEO.

The CEO & Council have little or no relationship with each other.

Employees do not approach Council directly about Corporation matters.

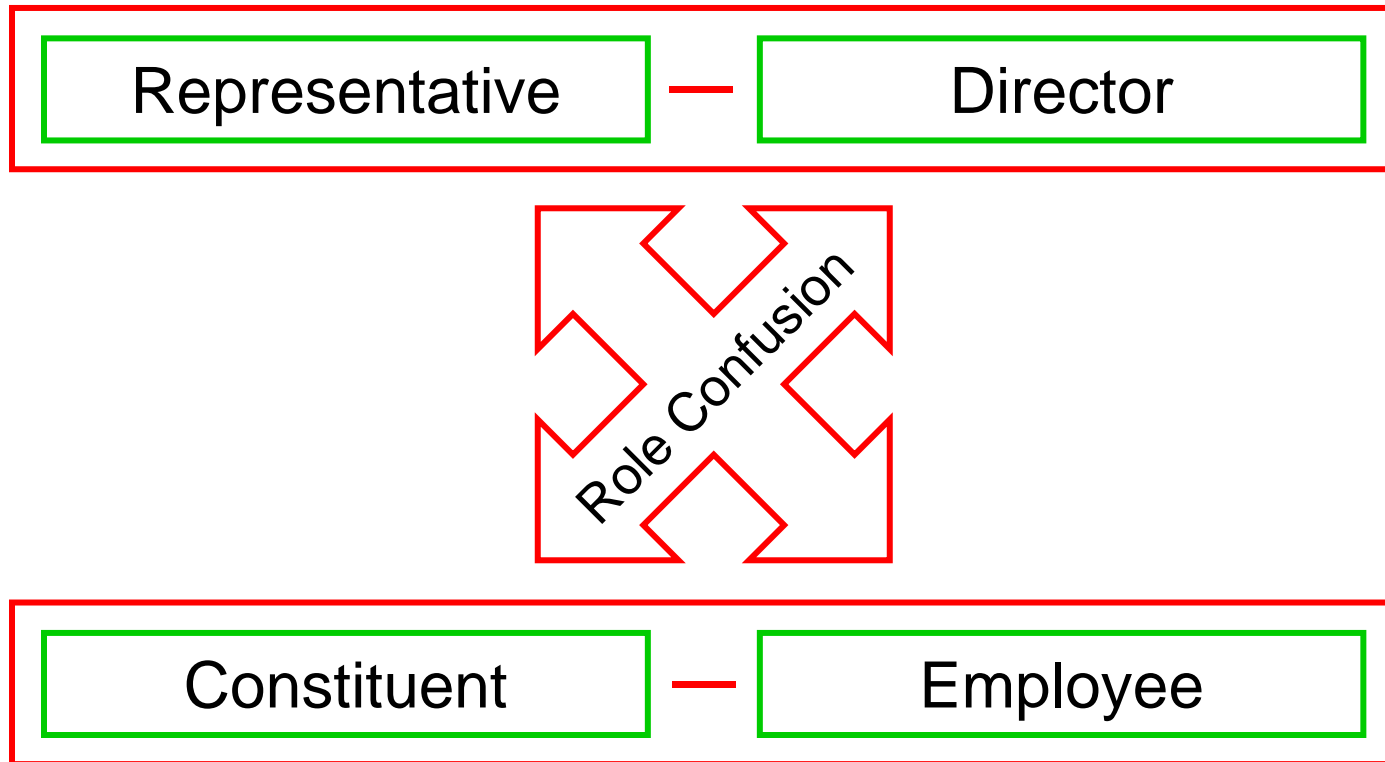
The Board informs business strategy and sets policy. It reports to Council regularly.

Advantage of the Separated Model

	Council-Run	Separated
Profitable	29	47
Not Profitable	24	10
Odds of Profitability	1.2 to 1	4.7 to 1

Nation-owned enterprises that are insulated from political interference are about *four times as likely to be profitable* as those that are not.

Conflicts of Interest under Council Direction:



Foundations of Tribal Corporate Governance

**Business
Activity**

**Managing the Interface of
Business & Government**

Corporate Charter

**Sound Civic
Governance Structures**

Foundations Explained

Sound Civic Governance

- Checks and balances
- Staggered terms
- Independent courts
- Clear and predictable rules
- Civil service protections

Sound Corporate Governance

- Specialization of business functions
- Clear specification of roles
- Clear powers for each role
- Clear relationships of accountability

Managing the Separation

- Clear connection to community objectives
- Annual planning and review
- Regular, clear, & robust reporting
- Independent, expert, open, and self-improving board

A Well-Managed Tribal Business

- Winnebago of Nebraska – 2 years without gaming competition.
- Established Ho-Chunk Inc.
 - Board of directors with independence.
 - High caliber CEO.
 - Five years of no dividends to the Tribe.
 - Five years of 20% of gaming net income to the business (only got \$8M over first two years).
 - Goal = profit.
- Established hotels, Indian-made cigarette distribution, C-stores, gasoline wholesaling and retailing, indianz.com, allnative.com, order fulfillment center, prefab housing, used cars, construction.
- Personnel disputes by due process, regular reporting to TC, learning-by-doing, entrepreneurial spirit, strategic integration.
- CEO: “We make the fastest mistakes in the Tribe.”

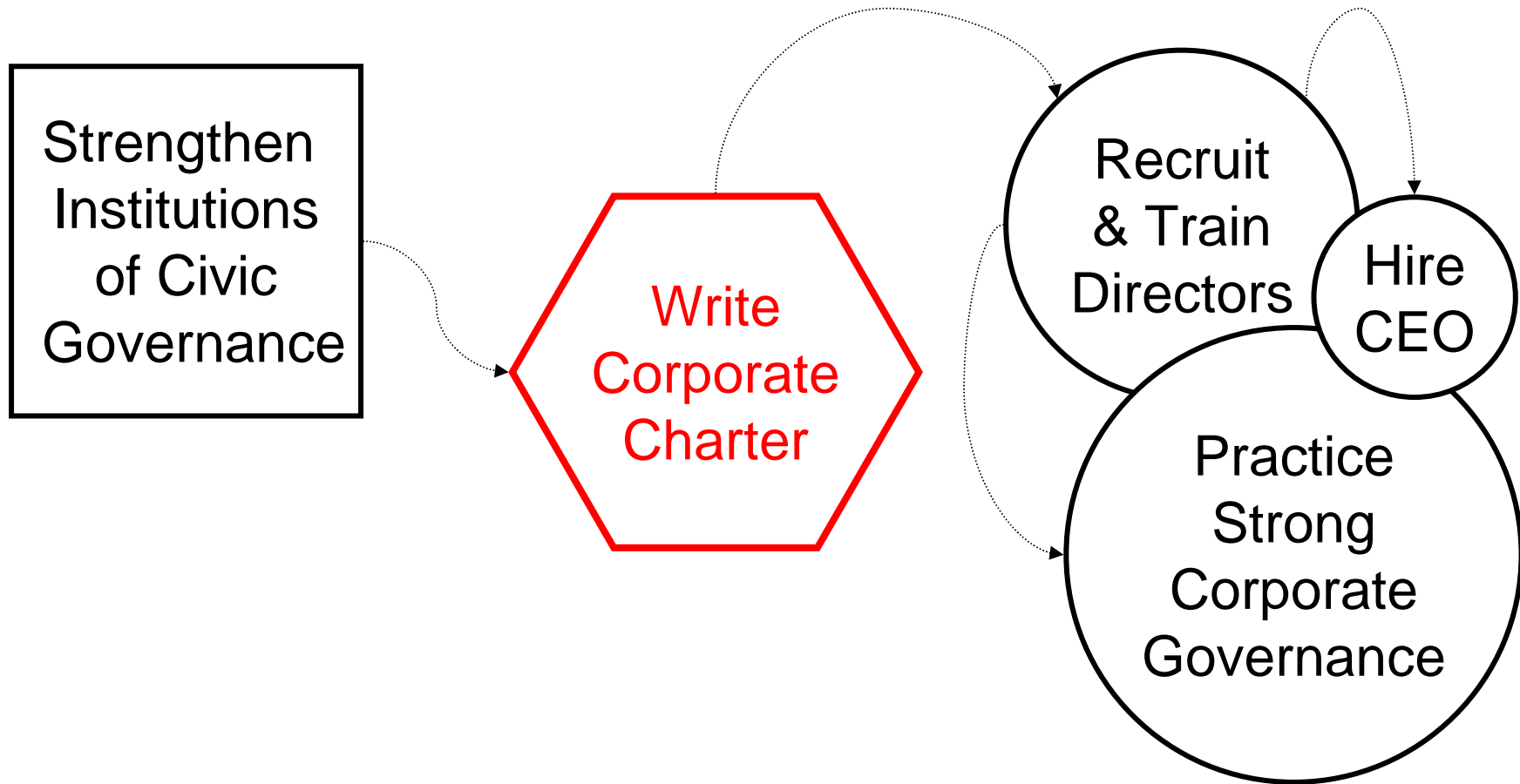
Result: Unemployment down (70% to 13% in 5 years)

Revenue growth (100% annually in first 5 years).

The Big Hazards:

- Dividends vs. reinvestment
- Personnel policy
- Ambiguity about who makes what call:
 - Waivers of sovereign immunity
 - Land acquisition, sale, and use, esp. tribal/trust land
 - Strategy & new projects
 - Large sales or purchases
- Nominating, approving, removing directors

To Do List for Corporate Success:



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