



Council of the Cherokee Nation

Meeting Minutes Rules Committee

Thursday, August 28, 2008

1:00 PM

Legislative Conference Room

CALL TO ORDER

Chair Frailey called the meeting to order at 1:05 p.m.

INVOCATION

Council Attorney Todd Hembree gave the invocation.

ROLL CALL

Present 15 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Meredith Frailey; Buel Anglen; Jack D. Baker; Tina Glory Jordan; Jodie Fishinghawk; Janelle Fullbright; Harley Buzzard; Curtis Snell; Chris Soap; Bradley Cobb and Chuck Hoskin, Jr.

Late Arrival 2 - Cara Cowan Watts and Julia Coates

APPROVAL OF MINUTES

Councilor Cobb made a motion to approve the July 31st regular session minutes. Councilor Anglen seconded the motion. Motion carried.

Councilor Jack Baker made a motion to approve the minutes of the August 11th sub committee minutes. Councilor Anglen seconded the motion. Motion carried.

REPORTS:

1. Marshal Service - Sharon Wright

Ms. Sharon Wright announced her report had been provided earlier today. She stated they have had Marshals at Standing Rock. All have returned but one who is scheduled to return at the end of this week. She announced a Marshal has been invited to speak at a conference in September by the U.S. Attorney's Office in regard to child sexual abuse. Councilor Buzzard asked which counties we are or aren't cross deputized with. Ms. Wright replied we are not with Tulsa, Washington and Ottawa Counties.

2. Justice Department - Diane Hammons

Ms. Diane Hammons introduced two new attorneys in her office as Brandy Inman and Elizabeth Odell. Chair Frailey requested Ms. Hammons provide comment on the email she had provided from the UKB Health Chair. Ms. Hammons stated she would provide a response to the email but stated she had pulled the regulations cited and is fairly confident in assuring this Council that the UKB's consultation or consent is not required to compact with IHS. Mr. Hembree reminded the Council that any vote taken is within their official scope. He stated if a lawsuit was filed it would be as the

official capacity not as an individual. Councilor Fishinghawk requested a list of where the foreclosures are located. Councilor Glory-Jordan inquired if the bad debt write off collection efforts go through the Attorney General's office. Ms. Hammons stated she doesn't believe it goes through her office for collections. She stated it was her understanding the line item was for future contingencies.

3. Election Commission -

No one was present to report. A written was provided.

4. Tax Commission - Sharon Swepston

Ms. Sharon Swepston noted they have had extended office hours to 6:00 p.m. in the Tahlequah office for a month now. She stated they are averaging 2 to 5 people during the extended hours. Councilor Bill John Baker inquired about the status of the smoke shops. Ms. Swepston stated they are in the process of negotiating a tobacco compact. She stated most of the new compacts have been signed within the last month. The Comanche, Kaw and Otoe Missouri have a rate of \$6.65. Councilor Bill John Baker inquired what our shops are currently paying. Ms. Swepston stated \$8.58. She stated they are trying to negotiate a \$6.65 rate for all shops. Councilor Thornton inquired if the most favored clause is included in the proposals. Ms. Swepston stated it is included. Councilor Hoskin Jr. inquired if she was able to research the utility vehicles. Ms. Swepston stated they have and have legislation that is going before the commission at this time and if approved will come forward to the Council. Councilor Hoskin, Jr. inquired if we have a discounted rate for the active military. Ms. Swepston stated we do not for the active military. Councilor Glory-Jordan inquired about the status of the farm tags. Ms. Swepston stated they are in the process of reviewing with the commission and if a change is made it will come before this body.

5. Self-Governance - Vickie Hanvey

Ms. Vickie Hanvey announced all of the certifications have been signed for the funding agreements with IHS and are on the directors desk as of this morning. She stated they are now beginning the work on the funding agreement with DOI and will have it completed by the first of October. She announced she has been selected to participate in a labor force report workgroup.

6. Gaming Commission - Jamie Hummingbird

Mr. Jamie Hummingbird announced his report has been provided and gave a follow up to Councilor Buzzard question last month. He stated during a meeting with the NIGC he asked the posed question. He stated it is their belief that the Indian Gaming Regulatory Act does bestow that ability on the chairman to make certain determinations as far as gaming is concerned. He stated there are additional changes going on now to the Section 20 regulations. Councilor Cobb inquired how the fees are figured in the reports. Mr. Hummingbird gave a brief explanation of how they are calculated.

7. Codification - Todd Hembree

Mr. Todd Hembree stated the codification process continues. He stated the next meeting is scheduled for the 6th of September at 2:00 p.m. to continue with the process.

8. GEG Investigation Report - Diane Hammons

Ms. Hammons announced the FBI and the Marshal assigned to the case are continuing with their case and interviews were conducted last month.

OLD BUSINESS

1. A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CRIMINAL CODE RELATING TO SEX CRIMES AND OTHER CRIMES AGAINST THE PERSON

Sponsors: Councilor Cara Cowan Watts and Councilor David Thornton

Councilor Glory-Jordan announced there are some guidance questions to be posed to the body in the new business items which the work group needs to move forward.

Councilor Glory-Jordan made a motion to table until next month. Councilor Hoskin seconded the motion. Motion carried with Councilor Cowan Watts opposed.

2. A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CRIMINAL PROCEDURE CODE RELATING TO SENTENCING, POWERS OF THE COURT, AND LIMITATION ON DEFERRED SENTENCES

Sponsors: Councilor Cara Cowan Watts and Councilor David Thornton

Councilor Glory-Jordan made a motion to table until next month. Councilor Hoskin seconded the motion. Motion carried with Councilor Cowan Watts opposed.

Councilor Cowan Watts made a motion for the sex offender legislation passed to Full Council be brought back to the Rules committee next month for amendments. Councilor Anglen seconded the motion. Motion carried.

3. DISCUSSION AND POSSIBLE ACTION OF ELECTED OFFICIALS COMPENSATION

Sponsors: Councilor Don Garvin

Councilor Garvin made a motion to table to next month. Councilor Cowan Watts seconded the motion. Motion carried.

NEW BUSINESS

1. DETERMINATION OF GUIDANCE QUESTIONS CONCERNING THE SEX OFFENDER REGISTRATION, SENTENCING AND SEX CRIMES ACT FROM THE RULES WORK GROUP

Mr. Todd Hembree handed out questions that the work group needs guidance with in order to move forward. Once these questions are answered the legislation will be amended appropriately and brought forward to the Rules committee in September. The question if a deferred sentence can be offered to sex offender offense is one of the major question that needs to be answered for several parts of the legislation. He stated there are three ways a person can be sentenced with a conviction of a criminal act. If found guilty a prison sentence can be given, a deferred sentence could be given or a deferred sentence. A deferred sentence is a guilty plea or a no contest plea that is not accepted by the court and defers sentencing for a period of time. If this individual does what is required by the court at the end of the term the record is expunged as though it has never happened. The sex offender legislation before you

now has a provision within it that states judges and prosecutors can not offer a deferred sentence to persons charged with these offenses. Ms. Becky Johnson stated it is currently in the legislation to reflect what Oklahoma law requires. She stated we don't want our citizens in Indian country to be protected any less than on fee land in Oklahoma. She stated this is clearly a policy decision for the Council. Councilor Cowan Watts requested clarification in regard to the prosecution and the judge's ability in regard to deferred sentences. Mr. Hembree replied the law now states if you are convicted with a sex offender crimes the prosecution could not offer or the judge could not take a deferred sentence.

Councilor Cowan Watts made a motion to require mandatory sentencing for sex crimes as listed on the handout. Councilor Anglen seconded the motion. Mr. Hembree replied the motion is actually for the second part. He stated the Council needs to determine if a deferred sentence is an option. If the answer is yes is there going to be mandatory sentencing and if the answer is no then we move forward. Councilor Cowan Watts replied when the motion was made she thought it wouldn't allow for deferred sentencing. Councilor Glory-Jordan stated during the last work group meeting Chief Smith was in favor of keeping the deferred sentence as an option for the prosecutor and judge. She stated this is in keeping with the idea that he nominate and we confirm very experienced district court judges who should have an array of options for any charge. An habitual offender is not treated the same as a first offense. She requested the option be left at the discretion of our experienced prosecutors and judges. Councilor Hoskin Jr. agreed with Councilor Glory-Jordan. He stated we should allow discretion for our prosecution and judges and in return our people will be better served. Ms. Diane Hammons stated this is not the position of the Attorney General's office. She stated it is embarrassing to her personally for our deferred sentencing law to be more lenient than the State of Oklahoma. She stated she realizes by having this position that she is not in accord with the Chief's views and that she is taking away some of her own discretion. Councilor Bill John Baker stated he is having difficulty with this requirement. The most heinous crime is sexual abuse on a child and the maximum they can be sentenced is one year. He stated he would rather not have any legislation so they would have to go through the state of federal system if all we can give is one year. Ms. Sharon Wright stated she is in the belief that there should not be a deferred sentence. Mr. Hembree stated the one absolute in the law is that there are no absolutes there are always exceptions. He stated it is better to error on the side of discretion than not. Councilor Bill John Baker inquired about the likely hood of the feds actually taking on one of the cases listed on the handout. Ms. Hammons stated it would be very unusual if they didn't. She stated she doesn't want us to be a haven for sex offenders by being more lenient than our sister jurisdiction. There are some levels of defenses when deferred sentences are not proper and the handout includes them. Councilor Soap inquired about the number of cases we are considering. Ms. Hammons replied there has been one case in the last four years. Ms. Wright stated the feds take concurrent jurisdiction. Councilor Fishinghawk inquired if we didn't have this code would all of the case go to the federal system. Ms. Hammons stated no, we still have these crimes on the books all that is happening is changing the sentencing procedure for these crimes. She stated if we didn't have a criminal justice system some of the cases would probably go unprosecuted. Councilor Cowan Watts wanted to make sure that any reference to the terms of sentencing that would be under the Indian Civil Rights Act have been changed to reference that law because it is being proposed in Washington DC to change and expand from one year to three years maximum. She stated she has been assured by the U.S. Attorney's office that these cases would continue to be prosecuted. As a tribal citizen she doesn't agree with the idea of mandating these crimes and allow deals to be made. The Cherokee Nation has spotted jurisdiction and it isn't right for someone who is a sexual offender the ability to cross the street knowing we will prosecute less. She voiced concern for this happening when we don't

at least set a minimum of standards as the state in mandatory sentencing without deferred sentences. She stated we shouldn't devolve any jurisdiction to the State of Oklahoma. Councilor Glory-Jordan stated Ms. Hammons made her case for her by stating as a prosecutor deferred sentences would be used on a very limited basis. She stated it needs to be there for that one case that it may be appropriate for. If there are no deferred sentences and the judges and prosecutors are not allowed discretion then we have a flawed system that treats everyone the same. She stated we do not have to do what the State does we are our own Nation and can do better. Our system needs to be built for our people. Councilor Soap inquired if studies had been done that would impact a juror's decision making capabilities in regard to types of sentences. Ms. Hammons replied she sure there is but is unable to speak toward them as to if there is an effect on a juror's decision if they know a deferred sentence is not an option. Mr. Hembree stated it is important to have a system of checks and balances. A deferred system allows for more checks and balances. Ms. Hammons stated sex offenders are notorious for not being cured. If deferred sentences are allowed on sex offenses we are more lenient than our sister jurisdiction the State of Oklahoma and that is an embarrassment. Councilor Cobb called for the question.

Chair Frailey repeated the motion as requiring mandatory sentencing on sex crimes with no deferred sentencing. A yes vote is for mandatory sentencing.

Mr. Hembree stated a yes vote would mean there are no deferred sentences.

Roll call is as follows:

Yea: 12 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Jodie Fishinghawk; Harley Buzzard; Curtis Snell; Chris Soap and Bradley Cobb

Nay: 5 - Meredith Frailey; Tina Glory Jordan; Janelle Fullbright; Chuck Hoskin, Jr. and Julia Coates

Mr. Hembree stated one of the other questions guidance is needed on is should individuals charged with any of the crimes on the handout be required to serve a mandatory jail time. If a person is convicted and will be registered as a sex offender should a judge or jury mandate that some portion of the sentence be served in jail.

Councilor Cowan Watts made a motion to support mandatory jail time for offenders with the crimes listed on the handout. Councilor Cobb seconded the motion. Roll call is as follows:

Yea: 11 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Harley Buzzard; Curtis Snell; Chris Soap and Bradley Cobb

Nay: 6 - Meredith Frailey; Tina Glory Jordan; Jodie Fishinghawk; Janelle Fullbright; Chuck Hoskin, Jr. and Julia Coates

Mr. Hembree stated the next question is in regard to what age a person could consent to sexual activities. Should the person be able to consent to activity of any age or someone in a certain range of ages. Councilor Thornton inquired as to what the State of Oklahoma law is with the age of consent. Mr. Hembree stated the state law is 16 unless you are in a teacher student relationship or if in a trust position. He stated some states have the plus two minus two. Ms. Sharon Wright suggested making it similar to the federal law where there is an age variance implemented. She gave an example of an 18 year old being legal to be with a 14 year old.

Councilor Thornton made a motion to adopt the federal codes in this situation. Councilor Garvin seconded the motion.

Ms. Wright stated it is definitely a crime for 12 years of age and under. If within a certain age limit 14 years old it could be consensual. Councilor Cowan Watts stated

it was her understanding that under the age of 16 you could not consent. If you are 16 you could consent with someone 2 years older, a 17 year old could consent with a 19 year old and at the age of 18 you are an adult. She stated this is the way it is structured this way in the act now. Councilor Coates stated this needs to be looked at as everyone is different. Not all 17 year old are the same and so forth. She stated this is criminalizing teenage relationships. She expressed the need to use extreme caution in this regard. Ms. Becky Johnson stated the federal law would make our laws deal more effectively with this issue. Right now it is a crime if a person is under the age of 16 now matter what the age difference is to the other party. The current law a 16 year old would be committing a crime by having sexual activities with at 15 year old. Councilor Bill John Baker called for the question on adopting the federal code.

Councilor Thornton made a motion to adopt the federal codes in this situation. Councilor Garvin seconded the motion. Motion carried with Councilor Glory-Jordan opposed.

2. A RESOLUTION CONFIRMING THE NOMINATION OF IMA JEAN MCCOLLUM AS A BOARD MEMBER OF THE CHEROKEE NATION COMPREHENSIVE CARE AGENCY BOARD OF DIRECTORS

Councilor Bill John Baker made a motion to approve. Councilor Crittenden seconded the motion. Motion carried.

3. A RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE VI SECTION 13 OF THE CHEROKEE NATION CONSTITUTION, PROVIDING FOR THE AMENDMENT FOR REPLACEMENT OF COUNCIL MEMBER DUE TO REMOVAL, DEATH, RESIGNATION OR DISABILITY

Sponsors: Councilor Jack D. Baker

Councilor Jack Baker stated when the constitution was written in 1999 there wasn't a provision for run off for multiple district areas. He made a motion to amend the constitution and strike "such seat shall be filled by the candidate having the next highest number of votes in that district, who is available and willing to serve and whose eligibility is confirmed by the Election commission. IN the event no such candidate exist." with the remaining of the language to state "the Council shall fill the vacated seat in the following manner: If a majority of the four-year term remains to be served, the COuncil shall authorize a special election in the district of the vacated seat to be conducted within ninety days; if a minority of the four-year term remains to be served, the Council shall elect a replacement who would otherwise be qualified to serve from the district of the vacated seat."

Councilor Jack Baker made a motion or the approval of the resolution. Councilor Garvin seconded the motion. Roll call is as follows:

Yea: 12 - Don Garvin; Meredith Frailey; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Janelle Fullbright; Harley Buzzard; Curtis Snell; Chris Soap; Bradley Cobb; Chuck Hoskin, Jr. and Julia Coates

Nay: 5 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Tina Glory Jordan and Jodie Fishinghawk

4. A RESOLUTION AUTHORIZING A LIMITED WAIVER OF THE SOVEREIGN IMMUNITY OF CHEROKEE NATION ENTERPRISES, L.L.C. AND THE CHEROKEE NATION

Sponsors: Councilor Cara Cowan Watts, Councilor Jack D. Baker and Councilor Janelle Fullbright

Mr. David Stewart stated this is a request from CNE for the purpose of effecting

marketing strategies. This strategy is similar to those used when we brand with McGil's and Toby Keith. This waiver request doesn't come into play without the approval of any agreement of the CNE board of directors. This waiver would effectively allow them to look at other brands to be used at the hotel. This resolution upon your approval will be placed on the agenda of the board of directors.

Councilor Cowan Watts moved for the approval. Councilor Anglen seconded the motion.

Chair Frailey stated in 1(d) lost profits against CNE is not included as it is in the Be It Resolved Clause. She inquired if this is of significance. Mr. Nason Morton replied suggested inputting it in to make clearer. Mr. Stewart stated if it is in the agreement it should be okay. Mr. Hembree suggested going ahead with the passage and if necessary it could be added with an amendment on the floor of the Council meeting.

Chair Frailey requested a copy of the agreement prior to the vote in full council. Mr. Hembree stated both he and the Attorney General's office have received a detailed agreement that is approximately 90% complete. He welcomed any Councilor who wishes to review to contact them.

Councilor Cowan Watts moved for the approval. Councilor Anglen seconded the motion. Motion carried.

ANNOUNCEMENTS

None.

ADJOURNMENT

Councilor Cobb made a motion to adjourn. Councilor Bill John Baker seconded the motion. Motion carried at 3:10 p.m.

STAFF PRESENT:

<i>Sharon Wright</i>	<i>Jamie Hummingbird</i>	<i>Becky Johnson</i>
<i>Sharon Swepston</i>	<i>Diane Hammons</i>	<i>Vickie Hanvey</i>
<i>Brandy Inman</i>	<i>Elizabeth Odell</i>	<i>Todd Enlow</i>
<i>Nason Morton</i>		

VISITORS PRESENT:

<i>Ed Bryce</i>	<i>Jim Ketcher</i>	<i>Todd Hembree</i>
<i>David Stewart</i>	<i>Shawn Slaton</i>	

APPROVAL / DISTRIBUTION

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: _____

Minutes attested and concurred by: _____

Date: _____