



Council of the Cherokee Nation

Council House
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Meeting Minutes RULES COMMITTEE

Thursday, April 24, 2008

1:00 PM

Legislative Conference Room

CALL TO ORDER

Chair Anglen called the meeting to order at 1:12 p.m.

INVOCATION

Councilor Garvin gave the invocation.

ROLL CALL

Present 17 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Meredith Frailey; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Tina Glory Jordan; Jodie Fishinghawk; Janelle Fullbright; Harley Buzzard; Curtis Snell; Chris Soap; Bradley Cobb; Chuck Hoskin and Julia Coates

APPROVAL OF MINUTES

Councilor Cowan Watts moved for the approval of March 27, 2008 regular session minutes. Councilor Bill John Baker seconded the motion. Motion carried. Councilor Thornton made a motion to approve the April 14, 2008 sub committee minutes with a correction of Councilor Soap being present. Councilor Cobb seconded the motion. Motion carried.

REPORTS:

Chair Anglen announced all reports have been provided and inquired if anyone had questions for the departments.

1. Marshal Service - Sharon Wright

Councilor Buzzard inquired as to where the district offices would be located. Ms. Sharon Wright stated James Redcorn would be in the Northern area above Locust Grove, Donnie Bowin would be in the Central area from Locust Grove to Stilwell and Vincent Smith would have the Stilwell Muskogee area down.

2. Justice Department - Diane Hammons

Councilor Fishinghawk inquired as to the status of the ICI cases. Attorney General Diane Hammons stated all three cases are still pending. Last Friday Sara Hill successfully argued a motion to dismiss that was pending against us in the Tribal court case. Ms. Hammons announced they were awarded a grant for the implementation of the Adam Walsh Act which involves the Marshal Service, Information Systems and the Justice Department. Councilor Fishinghawk requested

information regarding the Motion for Reconsideration in regard to redistricting filed by Councilors Cowan Watts and Garvin. Ms. Hammons stated she has not read the motion and therefore didn't feel comfortable answering questions. Councilor Fishinghawk stated she was interested in the timeline for filing this motion. Mr. Todd Hembree stated normally the timeline to file a motion to reconsider is 30 days unless there are extenuating circumstances for the courts to consider suspending their rule.

3. Election Commission - Patsy Eads Morton

No one was present to report.

4. Tax Commission - Sharon Swepston

Councilor Bill John Baker requested an update where the smoke shops are concerned. Ms. Sharon Swepston announced they have been out doing inspections on smoke shops in which they have seized yellow stamped cigarettes. She stated the commission held a conference call this morning where they ruled if the smoke shops have proof the yellow stamped cigarettes were purchased prior to the date of the March letter they can keep the inventory to sell. She stated the Tax Commission will now have the responsibility to inventory every smoke shop and maintain a list of the yellow tagged cigarettes. She stated they will continue to maintain the list to ensure yellow tagged cigarettes are not added to the inventory. The cigarettes that have been seized will be returned to the smoke shops beginning tomorrow. Councilor Fishinghawk stated she still has not received the report she requested showing the drop in sales when the higher rate went into effect. Ms. Swepston apologized for not getting the information requested and stated it would be provided. Councilor Fishinghawk inquired how the reduction in revenue would affect the general fund. Ms. Swepston stated the sales are down approximately 33% from last year. Councilor Fishinghawk requested the percentage be changed into dollars. Mr. Doug Evans stated the reduction of revenue has been addressed in the budget mod. He stated they are tracking close to the budget half way through the year. Ms. Callie Catcher stated they significantly reduced the revenue projection in a recent mod even prior to the arbitration ruling. Ms. Swepston stated one of the major reasons for the drop in sales was that we were no longer doing retail to retail with the Creeks. Mr. Evans questioned the reasoning for the reduction in tobacco revenue. Ms. Swepston stated one of the major factors is due to the Creeks getting their own wholesaler. Councilor Thornton inquired if this is due to the arbitration ruling. Ms. Swepston stated the arbitrators ruling stopped the retail to retail sales.

5. Self-Governance - Vickie Hanvey

Ms. Vickie Hanvey provided a written report. She stated they received payment for the Muskogee joint venture project in the amount of \$16.8 million.

6. Gaming Commission - Jamie Hummingbird

No one present to report.

7. Codification - Todd Hembree

Mr. Todd Hembree stated the committee has gone through all of the legislation and court decisions and have assigned titles. The next step in the process is to take each Act and compare to what is in the code book now, ensure all the changes are included and all repealed legislation is addressed. This step should take approximately 60 days then would be ready for the publisher. He gave appreciation to Nason Morton, Becky Johnson, Shelli Brittain, Kendall Byrd and others for their

efforts in the process.

8. GEG Investigation Report - Diane Hammons

Ms. Sharon Wright announced there hasn't been significant action within the last month they continue to gather documentation. The case continues in the Federal court system.

Chair Anglen asked Councilor Coates who is attending the meeting VIA remote attendance if she plans to attend the Joint Council meeting with the Eastern Band in Cherokee, North Carolina in October. Councilor Coates stated she does plan to attend.

Councilor Thornton made a motion to move new business item 4 before the old business. Councilor Garvin seconded the motion. Motion carried.

Yea: 0

4.

A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED - TOBACCO TAX

Councilor Bill John Baker reminded everyone of the arbitrators ruling and its impact on the smoke shops. He stated this is a small attempt to give back the 50 cent tax the Tribe is charging by placing a moratorium on it until a better compact is reached. Councilor Soap questioned the potential financial impact. Ms. Callie Catcher stated going forward they are calculating they would collect approximately \$56,000 monthly or \$700,000 a year. Councilor Glory-Jordan reminded everyone that the smoke shops provides over 350 jobs as well as lease benefits to at least 50 additional families. Councilor Hoskin Jr. echoed Councilor Glory-Jordan's comments and stated we do not want to go into compact negotiations with our industry in a crisis. Councilor Cobb requested an estimate in the amount of funds in State sharing. Ms. Catcher stated based on current levels it could be \$2ml a year. Councilor Thornton reminded everyone that the smoke shops were in agreement when the 50 cent per carton tax was added. He stated we need to be behind our smoke shops now and provide support. Councilor Crittenden called for the question.

Councilor Bill John Baker made a motion for the approval. Councilor Cowan Watts seconded the motion. Motion carried by acclamation.

OLD BUSINESS

1. Presentation of Recommendations of the Elected Officials Compensation

Councilor Garvin announced the committee isn't ready to report at this time and made a motion to table this item to the May meeting. Councilor Cowan Watts seconded the motion. Motion carried.

2. AN ACT RELATING TO THE AMENDMENT OF TITLE 19 OFFICERS AND MEETINGS; ADDING DIVISION OF QUESTION; AND DECLARING AN EMERGENCY

Councilor Jack Baker made a motion to table this item to the next meeting. Councilor Crittenden seconded the motion. Motion carried.

NEW BUSINESS

1. A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CHILDREN'S CODE RELATING TO CHILD PROTECTION AND BACKGROUND CHECKS FOR INDIVIDUALS WORKING WITH CHILDREN

Councilor Cowan Watts inquired if any other councilors would like to sponsor this legislation. The entire Council requested to be sponsors.

Councilor Cowan Watts made a motion for approval. Councilor Cobb seconded the motion. Motion carried by acclamation.

2. A RESOLUTION AUTHORIZING THE WAIVER OF SOVEREIGN IMMUNITY FOR SMARTNET HEALTH INFORMATION SHARING SYSTEM

Councilor Cobb gave a brief overview for this resolution. Councilor Glory-Jordan inquired if this is being done across the country now. Councilor Cobb agreed and introduced Sara Hill and Rhonda Stanley to answer questions. Councilor Glory-Jordan inquired if privacy issues are being addressed. Ms. Hill stated they are being addressed. Ms. Stanley stated the information will be accessible to the departments as it pertains to that department not all information will be available. Only providers will be able to access all information. Councilor Glory-Jordan inquired if patients would be given the opportunity to sign a release for this information. Ms. Stanley stated they would be given the opportunity to release information or opt out. Councilor Thornton inquired if waiving our sovereign immunity would open up this Council to lawsuits. Councilor Glory-Jordan stated any waiver of sovereign immunity is an opening to a potential lawsuit. Ms. Hill stated a waiver is needed because all of the members will be sharing the possibility of liability. She stated the waiver is limited we would not be liable of errors. The liability issue will come into effect if our employees act in a way that is negligent or shows willful misconduct. The Health Department has expressed the importance of this program out weighs the financial risk. Councilor Glory-Jordan inquired if the Council Attorney has had a chance to review and provide a recommendation. Mr. Hembree stated he has reviewed the legislation and stated he would defer to the Attorney Generals office to state whether it is narrow enough in regard to the waiver of sovereign immunity. Ms. Hill stated the waiver is limited to the members so that someone outside who is not a party to it cannot use the waiver. We have the right to reject future members to this agreement. She stated the types of claim are limited. It only allows compensatory damages. We can only be sued to enforce the terms of the contract. Councilor Glory-Jordan inquired if our waiver is a deal breaker. Ms. Hill stated she believed so. Mr.

Hembree stated he is satisfied that the waiver is narrow enough. Councilor Glory-Jordan inquired if it could be written into the law that the waiver is only for the partners that apply right now. Ms. Hill stated we could but it would limit the usefulness of the agreement. She stated the idea is to bring in new partners that the bigger the partnership the more useful the program becomes. Councilor Glory-Jordan voiced concern for this body not being aware of who the new partners are and how many partners are included in the waiver. Mr. Hembree inquired as to the rate new members would be added. He suggested bringing a resolution to this Council for each additional member added. Ms. Hill and Ms. Stanley were unable to answer. Ms. Hill stated they could rewrite the legislation to accommodate this request but is unsure how burdensome it may become. Councilor Cobb stated if we are going to do business with the United States or its entities we will have to waive sovereign immunity in some aspect. He stated as a doctor this legislation is important. Councilor Glory-Jordan made a friendly amendment prepared by the Attorney Generals office that future waivers concerning this agreement are brought back to this Council for consideration. Councilor Cobb requested Ms. Hill give the ramifications of this request. Ms. Hill stated it is difficult to answer at this time. She stated in the short term it should be fine. She stated over the long term it would depend on how broad and the number of members. Mr. Hembree recommended we proceed in as requested in the friendly amendment until such time it becomes burdensome. Ms. Hill stated the long term intention is to go national. Ms. Stanley stated the intention now is to cover the Cherokee Nation jurisdictional area. Councilor Cobb inquired if we are able to opt out. Ms. Hill stated we can opt out at anytime with a 30 day notice. Councilor Cobb inquired if the friendly amendment is requesting each time a member is added it comes before this council. Councilor Glory-Jordan suggested trying and seeing if it becomes burdensome before it is determined if it is or not. Her concern is the Council is the keeper of the purse and anytime we waive sovereign immunity we have the potential for a lawsuit that impedes our ability to control the purse. She stated she doesn't take it lightly and this seems to be a wholesale waiver. Ms. Hill stated at this point they have no idea of what will be added on a monthly basis that this is in its infancy. Councilor Cobb inquired if this amendment would cause a problem with being involved in the program. Ms. Hill stated she doesn't see it as being a problem. Councilor Hoskin Jr. stated the request for monthly consideration of waivers of sovereign immunity is not a bad idea. This would waive sovereign immunity for a limited time and provide an opportunity for review. He stated he agrees with Councilor Cobb that sovereign immunity has to be waived to do business outside of the Cherokee Nation. He stated he also agrees with Councilor Glory-Jordan that it is a constitutional responsibility and is one of our most important responsibilities as a Council. Councilor Soap inquired as to what percentage we influence the outcome of this project. Could we choose to wait and opt in once it is off the ground. Ms. Hill stated we are not the driving force of the project but without us it is a very thin sharing group. Councilor Glory-Jordan requested a report be provided on a monthly basis. Councilor Cobb stated he would accept if it was quarterly reports. Mr. Hembree recommended a waiver to the current members and then a waiver for each additional member added. Councilor Cobb inquired if the suggestion is for this to be done monthly. Mr. Hembree stated yes it should be done monthly in the Health committee. Councilor Glory Jordan restated her friendly amendment is to add a paragraph prepared by the Attorney General's office to this resolution to allow a waiver of sovereign immunity for the current list and future members of this group are brought to this council on a monthly basis with a resolution requesting a waiver of sovereign immunity. Councilor Cobb accepted the friendly amendment. Councilor Soap inquired as to why the other members do not have to waive sovereign immunity. Mr. Hembree stated Northeastern State University, Tahlequah City Hospital and some of the others are considered political sub divisions of the State and they are included in a title under the Oklahoma State Legislature. This Governmental Tort Claims Act contains limited

waivers of sovereign immunity under certain circumstance. He stated the Cherokee Nation does not have this and therefore must have an expressed waiver. Councilor Glory-Jordan stated the State Tort Claims Act limited the amount of judgment that can be filed against them to \$175,000. She stated this request doesn't have a limit. Councilor Glory-Jordan suggested setting a limit as the others have. Councilor Cobb stated he would need to know the amounts the others have limited themselves to before he could agree. Mr. Hembree stated he would find out what the limits are but believes it is \$175,000. He suggested setting a limit to \$200,000. Councilor Glory-Jordan suggested this as a friendly amendment. Councilor Cobb inquired if Ms. Hill would anticipate any problems. Ms. Hill stated she is unable to say if this is agreeable that it would have to be brought before them for their consideration. Councilor Cobb accepted the amendment and called for the question.

Councilor Cobb made a motion for approval. Councilor Cowan Watts seconded the motion. Motion for approval with 2 amendments passed with Councilors Thornton and Crittenden opposed.

- 3. A RESOLUTION AUTHORIZING THE NEGOTIATION AND EXECUTION OF LEASES OF TRIBAL LAND ON GAMING PROPERTIES AND AUTHORIZING POTENTIAL SUSPENSION OF CHEROKEE NATION SALES TAX COLLECTION FOR NON-INDIAN LESSEES

Mr. Brad Carson requested this resolution be withdrawn at this time to allow further study.

Councilor Cowan Watts made a motion to withdraw. Councilor Jack Baker seconded the motion. Motion carried.

- 4. A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED - TOBACCO TAX

This item was addressed prior to the old business items.

ANNOUNCEMENTS

Chair Anglen announced the next meeting is scheduled for May 29th at 1:00 p.m.

ADJOURNMENT

Councilor Crittenden moved for adjournment. Councilor Cowan Watts seconded the motion. Motion carried at 2:28 p.m.

STAFF PRESENT:

<i>Nason Morton</i>	<i>Diane Hammons</i>	<i>Sara Hill</i>
<i>Rhonda Stanley</i>	<i>Lita Maupin</i>	<i>Sharon Wright</i>
<i>Becky Johnson</i>	<i>Callie Catcher</i>	<i>Doug Evans</i>
<i>Alan Hefner</i>	<i>Todd Enlow</i>	<i>Vickie Hanvey</i>

VISITORS PRESENT:

<i>Charles Dry</i>	<i>Raymond Vann</i>	<i>Todd Hembree</i>
<i>Emily Bushyhead</i>	<i>Jim Ketcher</i>	<i>Mike Miller</i>
<i>Joe Lane</i>	<i>Brad Carson</i>	

APPROVAL / DISTRIBUTION

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: _____

Minutes attested and concurred by: _____

Date: _____