

An Act

Legislative Act 10 - 02

ACT RELATING TO IMPEACHMENT

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known as the "Impeachment Procedures for Elected Officials" and codified as Title 51, Chapter 8, Sections 81 - ? of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to establish procedures for impeachment of the Principal Chief, the Deputy Principal Chief, or Tribal Council members, *hereinafter* "Elected Officials."

Section 3. Legislative History

Article XI § 1 of the Cherokee Nation Constitution states, "The Principal Chief and the Deputy Principal shall be subject to removal from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction involving moral turpitude committed while in office."

Article XI § 2 of the Cherokee Nation Constitution states, "All other elective officers shall be subject to removal from office in such manner and for such causes as may be provided by laws passed by the Council."

Article XI § 3 of the Cherokee Nation Constitution states, "The Council shall pass such laws as are necessary for carrying into effect the provisions of this Article, insuring therein that due process is afforded the accused."

Section (code section) 4. Definitions

For purposes of this Title:

- A. Special Prosecutor means: an attorney admitted to practice law before the highest Court of the State of which he or she is a resident, and shall not be an employee, contractor or official of the Cherokee Nation.
- B. Impeachment means: the prosecution through the Special Prosecutor of an elected official, under the Constitution, for willful neglect of duty, corruption in office, drunkenness, incompetency, or any conviction involving moral turpitude committed while in office.
- C. Articles of Impeachment means: The articles of impeachment are the written accusations of one or more of the grounds for impeachment, prepared and sworn to by the special prosecutor, after his/her investigation and determination that probable cause exists that an impeachable offense has occurred.
- D. Elected Official means: the Principal Chief, Deputy Chief and all members of the Tribal Council, including those individuals who have been appointed to served the remainder of a term of office that has been vacated for any reason.

- E. **Presiding Judge:** the Chief Justice of the Judicial Appeals Tribunal, or if he or she cannot serve, another justice of the Judicial Appeals Tribunal, who will preside over the impeachment proceedings.

Section (code section) 5. Substantive Provisions of Law

A. Grounds for impeachment

Elected Officials shall be liable and subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any conviction involving moral turpitude committed while in office.

B. Initiation of impeachment

The Council, upon allegations of an impeachable offense or offenses committed by any Elected Official, may by majority vote appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he/she shall draft articles of impeachment for presentment to the Judicial Appeals Tribunal. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of the Cherokee Nation.

The Principal Chief, upon allegations of an impeachable offense or offenses committed by any Elected Official, may appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he/she shall draft articles of impeachment for presentment to the Judicial Appeals Tribunal. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of the Cherokee Nation.

C. Presentation of impeachment

The Special Prosecutor shall present the Articles of Impeachment to the Judicial Appeals Tribunal by filing the same in the office of the Clerk.

D. Presiding Officer of the Court of Impeachment

When sitting as a court of impeachment, the Tribal Council shall be presided over by the Chief Justice of the Judicial Appeals Tribunal, or if he is absent or disqualified, then by one of the Associate Justices of the Judicial Appeals Tribunal.

E. Oath - Concurrence of Councilors

When the Tribal Council is sitting as a court of impeachment the councilors shall be on oath or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the members of the Tribal Council, and unless it is found, by clear and convincing evidence, that one or more of the grounds for impeachment exist.

F. Judgment - criminal liability

An officer who is convicted of impeachment shall be removed from office, but this shall not prevent punishment of any such officer on either civil or criminal charges growing out of the same matter.

G. Designation of offense

The articles of impeachment shall state with reasonable certainty, the offense in office for which the officer is impeached, and if there be more than one, they shall be stated separately and distinctly.

H. Court of impeachment

When articles of impeachment shall be presented, the Tribal Council shall within ten (10) days thereafter organize as a court of impeachment, and may for the purpose of conducting the business of such court, appoint a clerk. The clerk shall issue all process and keep a record of the proceedings of such court. It may employ such stenographic, clerical and other help as may be required.

I. Hearing and summons

The Tribal Council when sitting as a court of impeachment shall appoint a day for hearing the impeachment, and the accused shall be required by a summons by the clerk to appear on that day. The summons shall be served by delivering a copy of the same and of the articles of impeachment to the accused, in person if found, or by leaving the copies at his residence with some member of his family over sixteen (16) years of age.

J. Powers of court of impeachment - Orders and Judgments - Power to enforce

The Tribal Council, sitting as a court of impeachment shall, through the Presiding Judge, have the power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts and judgments to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority and to make all orders rules and regulations which it may deem essential or necessary for the orderly transaction of its business.

K. Costs – How paid – Cost of accused if acquitted

If the accused is acquitted, he shall be entitled to his costs, including attorney fees, to be taxed by the clerk and paid by the Judiciary out of any funds available, and if convicted, he shall pay the costs, unless the JAT otherwise directs.

L. Expenses – How paid

This Act shall be used as authorization to expend funds for the purposes of implementing the procedures and requirements mandated herein.

Section (code section) 6. Provisions as cumulative

The provisions of this Act shall be cumulative to existing law.

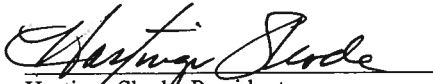
Section (code section) 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

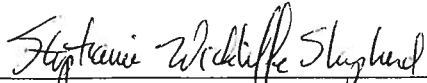
Section (code section) 8. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force after its passage and approval.


Enacted by the Council of the Cherokee Nation on the 11TH day of MARCH, 2002.


Hastings Shade, President
Council of the Cherokee Nation

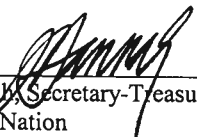
ATTEST:


Stephanie Wickliffe Shepherd, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 15th day of March, 2002.


Chad Smith, Principal Chief
Cherokee Nation

ATTEST:


Jay Hannah, Secretary-Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

John A. Ketcher	<u>YEA</u>	Melvina Shotpouch	<u>YEA</u>
Don Crittenden	<u>YEA</u>	Stephanie Wickliffe Shepherd	<u>YEA</u>
Harold "Jiggs" Phillips	<u>YEA</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Harold DeMoss	<u>YEA</u>
Mary Flute-Cooksey	<u>YEA</u>	Dorothy Jean McIntosh	--
David W. Thornton, Sr.	<u>YEA</u>	Nick Lay	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Barbara Starr-Scott	<u>YEA</u>		