



Council of the Cherokee Nation

Meeting Minutes

Executive and Finance Committee

Friday, March 30, 2007

3:00 PM

Legislative Conference Room

CALL TO ORDER

Chair O'Leary called the meeting to order at 3:35 p.m.

INVOCATION

Council member Conner gave the invocation.

ROLL CALL

Present 16 - Bill John Baker; Audra Smoke-Conner; S. Joe Crittenden; Jackie Bob Martin; David Thornton Sr. ; Phyllis Yargee; Don Garvin; Linda Hughes-O'Leary; Melvina Shotpouch; John F. Keener; Meredith Frailey; Cara Cowan Watts; William G. "Bill" Johnson; Buel Anglen; Charles "Chuck" Hoskin and Jack D. Baker

Absent 1 - Taylor Keen

APPROVAL OF MINUTES

Councilman Buel Anglen moved for the approval of the minutes of the February 23rd regular session. Councilman Jack D. Baker seconded the motion. Motion carried.

Councilman Bill John Baker made a motion to amend the agenda to move reports to the end, table old business item, "Cherokee Nation Benefit Analysis" to next month, and to add "An Act Amending Legislative Act #26-06 Authorizing the Comprehensive Budget for Fiscal Year 2007 – Mod. 6; and Declaring an Emergency" as item #11 under new business. Council member Cowan Watts seconded the motion. Motion carried.

COMMUNITY ASSISTANCE:

\$600	Craig Co. Education Corp	Councilor Hoskin	
\$1800	Foreman Riding Club	Councilor O'Leary	
\$1000	Strawberry Fest. Pow Wow	Councilors Crittenden/Martin	\$500 each.
\$500	Cherokee Elders	Councilor Thornton	Rainbow House
\$500	March of Dimes	Councilor Yargee	Increase amt to \$1000
\$700	Jay Senior Citizen Center	Councilor O'Leary	Financial Assistance

Councilman Garvin moved for the approval. Council member Conner seconded the motion. Motion carried.

LAW ENFORCEMENT:

\$10,000 Councilors Frailey/Keener Chouteau Police Dept. \$5000 each.

Councilman Hoskin moved for the approval. Council member Conner seconded the motion. Motion carried.

OLD BUSINESS

1. CHEROKEE NATION BENEFIT ANALYSIS (DISCUSSION)

Tabled to next month.

NEW BUSINESS

1. ACT RELATING TO
Amendment of L.A. 16-96, the Cherokee Nation General Corporation Act, as Amended by L.A. 2-03, L.A. 4-04, and L.A. 36-05

Todd Hembree stated this is an Act that would amend the General Corporation Code increasing the dividend from 30% to 35% and reserving that 5% exclusively for Contract Health Services of Cherokee Nation including but not limited to eyeglasses, dentures, prosthesis, and hearing aids. Councilman Thornton stated he would like to change dentures to dental and the reason for this Act is so Cherokee people can get services. Councilman Bill John Baker asked Councilman Thornton if he would consider when he makes a motion to actually saying dentures and caps. Councilman Thornton stated yes. Councilman Thornton asked Doug Evans if the covenant with the Bank could be changed and how much money has been borrowed on that covenant? Doug Evans stated yes it can be changed but he does not know if they have exercised any of that line of credit. Shaun Slayton stated they can certainly ask Bank of Oklahoma for a waiver and with the way their financial statements are they would grant that. He also stated CNE is fully supportive of supporting the people and they understand what their mission is and what their funds are for. When CNE came to the Council with the \$50 million dollar request, it was to fund the expansions they already have planned and are committed to. As they analyze those projects and the cash flow they have coming in they cut back their request to \$50 million knowing that if they assumptions they made held true that would carry them forward. As a part of that they structured it as two additional \$25 million dollar trances out there if they needed to tap into that to carry them through the construction period. They looked at the 35% dividend increase and it would accelerate their borrowings on that credit line by two months and extend it approximately three or four months which is not an issue but what it would do is they would have to come back unless economic conditions changed and ask for an additional tap into that additional \$25 million to take it up to \$75 million to carry the projects through to completion for what they have committed. Doug Evans stated the Jobs Growth Act created three slices of a pie; one is the dividend of 30%, one is CNE of 40%, and the other is CNB of 30%. If the Council is going to increase the dividend from 30% to 35% they need to identify which of the other two parts the 5% is going to come out of. The Jobs Growth Act regarding the increase in the dividend states under section 5A, Capital Investments, "the CNB Board of Directors shall establish appropriate policies for capital maintenance and investments based upon individual subsidiary needs provided that Cherokee Nation Enterprises shall retain a minimal capital for expansions from net income in the amounts equal to 40% of net income for fiscals years 2006 and 2008. There is no mention in this Act that CNB retains their remaining 30% but by default that's the size of the slice that's remaining after the dividend. If this body decides that it wants to increase the dividend and by default if they don't refer back to this unless Mr. Hembree has some alternate language that might be appropriate, it looks like what has been done in the past would dictate the 5% would come out of the CNB portion and not CNE. Shaun Slayton stated it is a 30% to 70% split with 40% to CNE and 30% to CNB and when they did the projections that came to the Council on the \$50 million dollars line of credit versus a higher one it was with the assumption based on the discussion with the CNB Board that the 30% that goes to CNB would be reinvested back into CNE and its projects and that was what their cash flow

projections were based on. Councilman Bill John Baker asked Doug Evans when the Council can anticipate the \$36 million dollars in carryover coming to the table. Doug Evans stated that would be a question for the Treasurer and she has not yet issued the audit. Melanie Knight stated the deadline for the audit is the end of March and it the Treasurers intention is to meet the deadline. Doug Evans stated once the audit has been issued with the independent audit report the only thing they would have to do at that point is to determine how much of the unreserved carryover is already appropriated in the current year budget. The difference is what would be added to the available funds to appropriate. Councilman Thornton stated what he was trying to set up is that the people of Cherokee Nation would receive this money on an annual basis. Doug Evans stated this has been discussed in the past of taking the dividend and creating a separate funding source and again he thinks they need to segregate this business dividend as it is coming in so they can understand where the dividends are being appropriated because currently they have a barrel that at the top has six different funding sources coming in and at the bottom all these tribal discretionary appropriations are going out and no one can say what type of a general tribal source of funds they are coming out of. Todd Hembree stated that would need to be considered by a Legislative Act to direct the gaming dividend to a specific cost center.

Councilman Bill John Baker made a motion to pass this Act and in the middle of line 18 where it states dentures, he would add the word "caps" between dentures and prosthesis and after hearing aids he would like to add language that says "said 5% would be exclusive of funds that CNE would be entitled to under the Jobs Growth Act L.A. 37-05. Councilman Thornton seconded the motion. The amendment passed by the following vote:

Yea: 8 - Bill John Baker; Audra Smoke-Conner; S. Joe Crittenden; David Thornton Sr. ; Linda Hughes-O'Leary; Melvina Shotpouch; John F. Keener and Charles "Chuck" Hoskin

Nay: 7 - Jackie Bob Martin; Don Garvin; Meredith Frailey; Cara Cowan Watts; William G. "Bill" Johnson; Buel Anglen and Jack D. Baker

Abstain: 1 - Phyllis Yargee

2. DISCUSSION AND POSSIBLE ACTION CONCERNING COUNCIL RESPONSE TO CHIEF'S VETO MESSAGE OF MARCH 19, 2007; INCLUDING BUT NOT LIMITED TO FILING OF LITIGATION

Todd Hembree stated per his memorandum to the Council members there is a disagreement as to the constitutional powers of the Chief. The Chief contends that he has a line item veto and exercised a line item veto as to Legislative Act 16-07 which was a comprehensive budget modification that was passed last month. His memorandum is self explanatory and this is litigation that Administration expects and he believes this is a question the Courts should answer.

Councilman Bill John Baker moved to ask Todd Hembree in order to protect the Council and its integrity to litigate this to the Cherokee Nation Supreme Court for a ruling. Councilman Anglen seconded the motion. Motion carried.

3. DISCUSSION OF CHEROKEE NATION LANDFILL AND ICI CONTRACT

Melanie Knight stated it was requested the Treasurer be present to address this item and regretfully she had already made plans before the meeting time had changed Friday therefore she was unable to change her plans.

A motion was made by Councilor Cara Cowan Watts and seconded by Councilor Buel Anglen, that this matter be Tabled. The motion carried by the following vote:

Yea: 9 - Audra Smoke-Conner; Jackie Bob Martin; Phyllis Yargee; Don Garvin; Meredith Frailey; Cara Cowan Watts; William G. "Bill" Johnson; Buel Anglen and Jack D. Baker

Nay: 5 - Bill John Baker; S. Joe Crittenden; Linda Hughes-O'Leary; John F. Keener and Charles "Chuck" Hoskin

Not In Room: 2 - David Thornton Sr. and Melvina Shotpouch

4. DISCUSSION OF "VANN vs. NORTON" AND RELATED FREEDMEN MATTERS

Diane Hammons reported on the activity and status with the action pending in the District Court in the District of Columbia. What has happened recently is an extension of time granted the plaintiffs to file their opposition to the Cherokee Nations motion to dismiss for lack of personal jurisdiction or to transfer to the Eastern District of Oklahoma. They have not responded to this yet, they asked the court for more time, the courts granted them time and that is due May 4th. The government's response is the same day and a reply is due May 24th. Pending if the Judge overrules the Nations motion to dismiss the Nation has twenty after that to answer, also pending in the Federal Circuit Court for the District of Columbia is the Nations notice of intent to appeal on Judge Kennedy's initial opinion and order whereby he ruled we are not entitle to sovereign immunity on this issue and Congress had abrogated our sovereign immunity. They filed a notice of intent to appeal but have not yet filed an opening brief because no briefing date has been set by the Federal Circuit. Those are the only things pending in any court right now to her knowledge. Todd Hembree stated one of the reasons this matter is on the Executive & Finance agenda is the question of federal funding possibly being frozen and gaming revenues government to government relations being disrupted. Throughout the debate and the comments of this issue the matter of the Seminole Tribe has been brought up he was asked to get someone that was knowledgeable on that and he was able to get Jennifer McVee, the Attorney General of the Seminole Nation. Jennifer McVee stated her understanding from Mr. Hembree is there are questions from this Council regarding similarities and dissimilarities of the litigation and some issues stemming from the election in previous years. She wants what is best for the Cherokee Nation and she is not here to sway the Council politically one way or another. She gave the Council her legal opinion regarding the Seminole Nation and the rendition of the facts concerning the Seminole Nation. Todd Hembree stated just by way of information they wanted the Council to be made aware that Mrs. McVee's firm does represent the United Keetoowah Band in certain litigation. Todd Hembree stated there are similarities and there are differences in the situation and he thinks they are very important on both sides. One of the biggest difference is at the Seminole Nation's time there was tremendous disunity in the election process and that is something this Council and Administration is cognizant of. All parties need to look toward the Cherokee Nation's best interest. Diane Hammons stated Cherokee Nation is in the middle of litigation and the press is here and it would be very ill advised for them to discuss complete strategy in the National and State media. Some of the big differences between Cherokee Nation and the Seminole Nation is that Cherokee Nation is in a much more stable place than they were then. They did not then nor do they now have a tribal court system that would have allowed the Freedmen plaintiffs to have sought relief in the tribal courts and of course we do. Although the treaty language is similar they do not have the statutory case law president as we have with our language also one very practical difference is the Freedmen plaintiffs in the Seminole case were not allowed to vote on that constitutional amendment. Melanie Knight stated due to this agenda item and because it is in this Executive &

Finance Committee she felt it was appropriate to bring to the Council a request for additional appropriations to defend this matter and the election. When the budget was passed obviously they did not think the Nation would be joined in the party to the suit. Cherokee Nation has now been joined as a party and its sovereign immunity has been waived. They need to make sure the Nation is defended properly therefore she is requesting an additional \$520,000 dollars to defend the Nation. They do not know when these matters are going to come forward and they expected court action before now either in our court or federal court following the election.

Councilman Jack D. Baker moved to amend the agenda to consider the additional appropriation of \$520,000. Council member Cowan Watts seconded the motion. Motion carried with opposition from Councilor Linda O'Leary and Bill John Baker.

Yea: 14 - Audra Smoke-Conner; S. Joe Crittenden; Jackie Bob Martin; David Thornton Sr. ; Phyllis Yargee; Don Garvin; Melvina Shotpouch; John F. Keener; Meredith Frailey; Cara Cowan Watts; William G. "Bill" Johnson; Buel Anglen; Charles "Chuck" Hoskin and Jack D. Baker

Nay: 2 - Bill John Baker and Linda Hughes-O'Leary

Council member Cowan Watts moved to approve the request for the additional appropriation of \$520,000. Councilman Garvin seconded the motion. Councilman Hoskin offered an amendment that prior to the dollars being released that the Council have an itemized report of all attorneys, firms and itemized amounts spent on Freedmen issues since 2003 under a separate code. Council member Cowan Watts accepted the amendment.

Councilman Bill John Baker moved to table this request for additional appropriation of \$520,000 to a special meeting on April 16th at 1:3 to give time to research and visit with the Chief and the Council Attorney. Council member Cowan Watts seconded with an amendment to have the meeting at 2:00. Councilman Bill John Baker accepted the amendment. Motion carried.

Councilman Bill John Baker made a motion to add the landfill to the special meeting agenda and to have Doug Bane, Callie Catcher and the owner/leasers of the landfill here at that meeting. Councilman Thornton seconded the motion. Motion carried.

Councilman Hoskin stated on the same motion he made earlier he would appreciate it if the Council could have that information he requested prior to this meeting on April 16th so the Council can get a handle on where they are at.

5. A RESOLUTION DONATING THE MOBILE UNIT TO CHEROKEE COUNTY EMERGENCY MANAGEMENT

Councilman Bill John Baker made a motion to donate the mobile unit to the Cherokee County Emergency Management. Council member Yargee seconded the motion. Motion carried.

6. TREASURER'S REPORT - CHEROKEE CONNEX

Councilman Jack D. Baker move to table this item. Councilman Anglen seconded the motion. Motion carried.

Councilman Bill John Baker made a motion to amend agenda and to have this report for the Special Meeting on April 16, 2007 at 2:00 p.m. Councilman Hoskin seconded the motion. Motion carried.

7. GPR EQUIPMENT - CULTURAL RESOURCE REQUEST (\$22,000)
- Councilman Bill John Baker moved to approve the \$22,000 request for the GPR equipment. Council member Yargee seconded the motion. Motion carried.**
8. BOYS & GIRLS CLUB/TAHLEQUAH SUMMER PRIDE (\$65,000)
- Councilman Bill John Baker moved for the approval of the \$65,000.00 request. Council member Yargee seconded the motion. Motion carried with opposition from Councilman Buel Anglen.**
- Yea:** 15 - Bill John Baker; Audra Smoke-Conner; S. Joe Crittenden; Jackie Bob Martin; David Thornton Sr. ; Phyllis Yargee; Don Garvin; Linda Hughes-O'Leary; Melvina Shotpouch; John F. Keener; Meredith Frailey; Cara Cowan Watts; William G. "Bill" Johnson; Charles "Chuck" Hoskin and Jack D. Baker
- Nay:** 1 - Buel Anglen
9. HOUSING ACCESSIBILITY PROGRAM SUBSIDY (DISCUSSION & POSSIBLE ACTION)
- Councilman Bill John Baker moved for the approval of \$250,000.00 to the Housing Accessibility Program Subsidy. Councilman Thornton seconded the motion. Motion carried.**
10. ROAD & BRIDGE PROJECT REQUESTS FOR FY2007
- Doug Evans stated all current requests included in this month's package fall within each respective Council member's allocated balance.*
- Councilman Garvin moved for the approval. Councilman Thornton seconded the motion. Motion carried.**
- AN ACT AMENDING LEGISLATIVE ACT #26-06 AUTHORIZING THE COMPREHENSIVE BUDGET FOR FISCAL YEAR 2007 - Mod. 6;
AND DECLARING AN EMERGENCY
- Doug Evans stated with the Council's permission he will include the following individual appropriations to this Mod package 6; GPR equipment \$22,000, Tahlequah Boys & Girls Club \$65,000, and the Housing Accessibility Program Subsidy \$250,000. After reviewing the submission of Mod - 6 he found no technical issues surrounding these requests, nor does he have any concerns related to their respective carryover estimate; however, he recommends the committee request further documentation and justification to adequately understand the purpose of the appropriation requests of items 1 & 2.*
- Councilman Jack Baker moved for the approval of mod - 6 with amendments. Councilman Bill John Baker seconded the motion. Motion carried.**
- Council member Cowan Watts stated due to the time she requested written reports be submitted. No objections, written reports were submitted.**

ANNOUNCEMENTS

The next tentative meeting date is tentatively scheduled for April 27th, 2007 at 3:00 p.m.

A Special E&F meeting is scheduled for Monday, April 16th at 2:00 p.m.

ADJOURNMENT

Council member Cowan Watts moved for adjournment. Councilman Martin seconded the motion. Motion carried.

STAFF PRESENT:

<i>Melanie Knight</i>	<i>Tamyse Leake</i>	<i>Diane Hammons</i>
<i>Tom Elkins</i>	<i>Doug Evans</i>	<i>Jokay Dowell</i>
<i>Jon Parris</i>		

VISITORS PRESENT:

<i>Dennis McLemore</i>	<i>Carey Tilley</i>	<i>Bryan Collins</i>
<i>Todd Hembree</i>	<i>Susan Ruckman</i>	<i>Stacy Leeds</i>
<i>Raymond Vann</i>	<i>Donna Hales</i>	<i>Charles Dry</i>
<i>R. G. Mason</i>	<i>Bob Leach</i>	<i>Jim Ketcher</i>
<i>Jim Carrington</i>	<i>Thelda Boen</i>	

APPROVAL / DISTRIBUTION

Minutes submitted by: Gayle Miller, Recording Secreatry

Motion to approve minutes made by: _____

Minutes attested and concurred by: _____