

**RULES COMMITTEE
LEGISLATIVE CONFERENCE ROOM
February 7, 2008
10:30 A.M.**

STANDING COMMITTEE: Rules Committee

COMMITTEE PRESIDED BY: Meredith Frailey, Chair

COMMITTEE MEMBERS PRESENT:

Meredith Frailey	Buel Anglen	Bill John Baker
Jack D. Baker	Harley Buzzard	Don Garvin
Bradley Cobb	Joe Crittenden	Jodie Fishinghawk
Janelle Fullbright*	Chuck Hoskin, Jr.	Tina Glory-Jordan
Curtis Snell	Chris Soap	David Thornton*
Cara Cowan Watts		

COMMITTEE MEMBERS ABSENT:

Julia Coates

STAFF PRESENT:

Paula Ragsdale	Gregg Simmons	Melanie Knight
Diane Hammons	Jamie Hummingbird	Dan Agent
Deputy Joe Grayson	Ginger Brown	Doug Evans

VISITORS:

Joe Brooks	Raymond Vann	Brad Carson
Todd Hembree	Jackie Bob Martin	Mike Miller
Joe Lane	Roger Johnson	Jennifer Barger Johnson
Gina Olaya	John A. Ketcher	Tony Grantham

QUORUM ESTABLISHED: Yes

LEGISLATION: Yes

**RULES COMMITTEE
LEGISLATIVE CONFERENCE ROOM
February 7, 2008
10:30 A.M.**

CALL TO ORDER:

Chair Frailey called the meeting to order at 10:30 a.m. Councilor Cowan Watts gave the invocation. Roll was called and a quorum was established.

APPROVAL OF MINUTES:

Councilor Cobb moved for the approval of December 20, 2007 regular session minutes. Councilor Cowan Watts seconded the motion. Motion carried. Councilor Bill John Baker made a motion to approve the December 17, 2007 sub committee minutes. Councilor Anglen seconded the motion. Motion carried.

Councilor Glory Jordan made a motion to amend the agenda to move item 10 in new business to the forefront due to the number of visitors present regarding this issue. Councilor Cowan Watts seconded the motion. Councilor Jack Baker suggested an amendment to move item 13 before 10 due to the presenter being from the Oklahoma City area. Councilor Glory Jordan denied the request for 13 to come before 10. Chair Frailey restated the motion as amending the agenda to move item 10 then 13 of new business to before reports. Motion carried.

NEW BUSINESS:

- 10. A Legislative Act Amending Title 68 Chapter 4 of the Cherokee Nation Code Annotated – Tobacco Tax: Adding Definitions, and allowing for Repeal of Sections of the Tobacco Tax Compact Act.** Secretary of State Melanie Knight provided a handout of a brief outline of the amendments being presented. The Wholesaler Act of 2008 does 2 things; provides authority for us to create a wholesaler and create an option for purchasing the border shops. She stated the Act does not become effective unless we are without a compact. This authorizes the Nation to become a wholesaler. The purpose would be if we are without a compact there would be a need for a means to get merchandise to the Cherokee Nation to sell. The Nation would then resale the merchandise with a 65% tax rate. This is a means of supply but also it will be the Nation that is at risk if there is a dispute. The tax rate is set at 65% which without a compact would be less than the state rate of 75%. The licensing requirements would change where the wholesaler would license with the Nation instead of the State. The buy out or purchase provisions of this Act would provide an option for the retailer to sell their business to the Cherokee Nation. She stated if there isn't a compact or a new compact is negotiated it is almost 100% likely that it would be a flat rate. Border rates would no longer exist. She announced there is also a buy out of leases available. This is an option to the retailer it is not mandatory. Chair Frailey requested a motion passage to allow discussion. Councilor Glory Jordan made a motion for the passage of this Act. Councilor Fishinghawk seconded the motion. Councilor Bill John Baker stated this is a formula for disaster for every smoke

shop in the Cherokee Nation. If you want to come up with a plan where we offer the wholesalers an advantage guaranteed to sell \$3.00 cheaper than Wal-Mart can buy. Our smoke shops have been under attack. Wal-Mart, Quick Trip, and Murphy's have all made deals with the cigarette companies. The tax is really mute. It doesn't matter what the tax is if the cigarette companies are willing to sell cheaper than the tax to the big companies. He suggested the Cherokee Nation take a hit and sell to the smoke shops for \$3.00 cheaper than what Wal-Mart is selling. This would put us on a level playing field and that is what it has always been about. He stated all we will be doing with this is putting the smoke shops out of business. He stated he would be opposed. Councilor Buzzard requested Councilor Glory Jordan withdraw her motion to allow him to make a motion to approve for discussion to continue. Councilor Glory withdrew her motion to pass and seconded Councilor Buzzard's motion for approval. Councilor Cowan Watts requested to yield time to Mr. Joe Lane. Chair Frailey requested the Council have discussion first then time will be allowed for the guests. Councilor Hoskin Jr. stated in respect to the buy out the years the administration is looking at are some what dated. Ms. Knight there is two options. One is to use years before the most current compact because we didn't have the retail to retail sales factored in or use current year sales and back out the retail to retail sales. Councilor Fishinghawk inquired as to what other tribes are doing. Ms. Knight responded saying different tribes are in different situations. The Choctaws operate all of their own shops. The Creeks are operating in a similar arrangement but unsure of what their tax rate. Councilor Fishinghawk requested an explanation of wholesaler. Ms. Knight stated in general term under the present law to be a wholesaler licensed by the Nation you must also be a wholesaler licensed by the State. This Act would eliminate the need for the State license. Mr. Gregg Simmons stated the change in the code wouldn't affect the operation. Councilor Fishinghawk requested the opinion of Mr. Campbell a wholesaler for 40 years regarding the Cherokee Nation becoming a wholesaler. Mr. Campbell a wholesaler has to be licensed by the State. The Creeks are a wholesaler that is not licensed by the State however some of their cigarettes do not have stamps. He stated he couldn't sell without a 7.75 tax on each carton. He stated the 65% Ms. Knight is offering is a better situation however the retailer down the street has an even better situation. The major manufacturers will not sell to you at a cheaper rate and will not put you on direct. He stated he is having a hard time staying after 40 years. Without Phillip Morris on the native side you would only be able to get low end cigarettes. The Creeks are buying out of Canada which is unstamped. Ms. Knight announced they do not feel it is required in Indian country to have a State license therefore they would not seek one. She stated they have made contact with other wholesalers that are not licensed in the state of Oklahoma and does not have an agreement with the state of Oklahoma. The first option would be to purchase from them and bring directly into Indian country. Councilor Thornton stated we have fussed about this for years and haven't included the people working for us. Some of these people were asked to go into the business. He suggested rather than buying out the border shops to buy them all out and then the Cherokee Nation could take over. He stated a committee should be formed with members of this committee and smoke shop owners to work this out if it has to be changed. He stated Quick Trip is the biggest backer of the First Nation which have a sole purpose to drive Native American businesses out of business. He voiced concern for us not communicating with the smoke shops. The smoke shops employ Cherokeees and pay the Cherokee Nation on a monthly basis. Councilor Thornton stated he would be opposed to this

legislation. Councilor Buzzard requested Ms. Knight give a scenario if we do not compact with the State. Ms. Knight stated there are a couple of things that factor in. The arbitration is ongoing and has been fully briefed and a decision is expected from the arbitrators. We don't know what the decision will be the State has been accused of breaching the contract and we have accused them of breaching the contract in regard to the retail to retail sales. The decision is far over due. Once a decision is made the State can say this compact is not workable and direct us to negotiate a new compact at this point we would be without a compact. The best thing to do would be to negotiate a compact before the arbitrators rule to keep from having a break in the compact. If we are without a compact the State's rates of 75% go into effect. This would be the worst case scenario for the retail shops. Councilor Soap asked what the expected time frame for negotiation of a compact. Ms. Knight stated that is difficult to answer. Ms. Diane Hammons stated she is unsure of the time. Ms. Hammons stated it depends upon what the arbitrators' issue. The negotiation may take months but it could take even longer. Councilor Bill John Baker stated a lot of these smoke shop owners were approached about getting into the business and there was an advantage to tobacco within the Nation. Now Quick Trip, Wal-Mart and others have been working to take the advantage away. He questioned if the administration had considered placing 8 or 10 gaming machines in the smoke shops to cover the lost advantage. Ms. Knight stated they haven't considered that option. She stated this is taxation and what Councilor Baker is referring to is buying power. They have discussed options of having several small retailers form a coalition to have more buying power. Another option is to draft a proposed bill for the state legislature to do pricing similar to the alcohol industry. Councilor Glory Jordan stated her concern is for the 100's of families that appear to be employed in this industry and the lease holders and their families. She agreed with Councilor Thornton in regard to the need to form a committee to include the input of the smoke shops. She stated she would be opposed to the legislation today. She stated if the State of Oklahoma lost a business of 400 to 500 employees they would be outraged and we need to be also. Councilor Fullbright stated she is against what Quick Trip is trying to do but during the campaign season the smoke shop people were hostile toward her. Councilor Crittenden stated this isn't politics this is just doing what is right. He suggested just moving along with what we have until the arbitration is settled. He stated if there is a problem the smoke shop owners will let us know. Mr. Joe Lane stated he knows the administration is trying to do the right thing but this will put the smoke shops out of business. When they started compacting in 1992 by going to the state and negotiating a 25% rate and was told it was forever. However when the compact ran out 3 years ago because of wanting gaming dollars the smoke shops were hurt. He requested voting down the legislation or forming a committee and allowing them to have input. Former Chief of the Delaware, Joe Brooks, stated he was against the compact in 1992. He agreed if a tax increase is passed all smoke shops will be shut down. He stated the fight needs to begin now or when the gaming compact runs out they will have it all. Stand up and fight for your tribal sovereignty. Mr. Tony Grantham general manager from Sun Flower Supply announced he has been in the industry for 1991. Sun Flower Supply has been built primarily with the partnership of the Native American people of Oklahoma. He stated Phillip Morris began qualified sales this year which means they have to know where 60% of your product goes. If you pass this number you are allowed to stay on direct. This qualified sales is nation wide. He stated the most pressing issue is not the State of Oklahoma for the smoke shops it is Phillip

Morris and RJ Reynolds. March 28th is the date the 60% numbers must be met. If they are unable to satisfy them then they will be unable to buy therefore unable to provide for the smoke shops. Councilor Soap inquired what the effects of the smoke shops if the compact isn't reached. Mr. Lane provided an example of what would happen to him as a smoke shop owner. He stated he would have to pay \$10.30, the State rebates on a quarterly basis, and he would be approximately \$4.00 higher than his competition. He stated he is unable to tie up millions of dollars waiting on rebates. He stated the smoke shops along the Texas border have an advantage of gaming, fuel, and tobacco. He stated the only advantage here is the tax. Councilor Cowan Watts called for the question. Chair Frailey stated the motion on the floor is to approve the legislation regarding the tobacco tax. Roll call is as follows:

Buel Anglen	Nay	Bill John Baker	Nay
Jack Baker	Nay	Harley Buzzard	Nay
Bradley Cobb	Nay	Joe Crittenden	Nay
Jodie Fishinghawk	Nay	Meredith Frailey	Nay
Janelle Fullbright	Nay	Don Garvin	Nay
Chuck Hoskin Jr.	Nay	Tina Glory Jordan	Nay
Curtis Snell	Nay	Chris Soap	Nay
David Thornton	Nay	Cara Cowan Watts	Nay

The motion for approval fails with a vote of zero (0) yeas and sixteen (16) nays. Chair Frailey gave appreciation to everyone for their input.

13. Presentation of Recommendations of the Elected Officials Compensation

Committee. Judge Jennifer Barger Johnson provided a handout of their recommendation. Chair Frailey stated Ms. Johnson was very active in the last compensation committee recommendation and gave appreciation for her return. Ms. Johnson announced they met for the first time on January 16th where they unanimously appointed the fifth member Joe Haley. The committee met on the 21st of January to deliberate recommendations of salary changes if any for the Cherokee Nation elected officials. Upon examining the data received from the Cherokee Nation regarding salaries of other tribes they found it notable that under the current salary structure of the Cherokee Nation this Council is approximately 6.5% below comparable 2007 averages for the other tribes. The deputy chief is 28.4% below comparable averages and the principal chief is 5.34% below comparable averages. As a result with consideration of cost of living and the increase in obligations the committee has recommended a 5% base salary increase per year for the remaining 2007 term. She stated the committee feels this would help bring the tribe back in line with what the other tribes are doing. She stated with the 5% increase in 2008 and 2009 the Cherokee Nation would still be below comparable averages. Mr. Hembree commended the compensation committee on their efforts in this matter. He reminded the Council that this legislative Act was passed as an effort to depoliticize elected official raises. He strongly suggested the Council give the recommendation consideration. Councilor Cobb stated he was very impressed with the work of the compensation committee. Councilor Thornton apologized for the compensation committee having to do this a second time. He stated last term the Council stated they were not going to accept a salary increase and he is still not. If it would have been left the way it

was at first he was in favor. Councilor Crittenden inquired if the committee considered moving the deputy up beyond 5% to make up some of the difference. Ms. Johnson stated they did consider it but wanted to maintain a standard scale to not be as confusing. Councilor Crittenden voiced concern for the unfairness of the deputy's pay. Councilor Garvin stated this is a good plan however the original was to come up with a recommendation for 2011. He stated he would prefer to keep it that way and not vote himself a raise now. He made a motion to table the recommendation to the next meeting. Councilor Cowan Watts seconded the motion. Motion carried. Chair Frailey acknowledged compensation committee member John A. Ketcher.

Councilor Glory Jordan announced the Cherokee Nation Youth Council is hosting a homemade chili sale in the Financial Resources break room from 11:00 a.m. to 1:00 p.m. for \$3.00. She suggested the Council and everyone in attendance go over and show support because they will be the ones sitting in our seats one day.

Councilor Cowan Watts made a motion to accept all reports in writing and then approve the nominations in Toto. Chair Frailey stated one of the Councilors does have a question regarding a report. Mr. Hembree suggested having the question submitted in writing with a 24 hour turn around for an answer. Councilor Fishinghawk agreed to submit her question in writing. Councilor Anglen seconded the motion to accept the reports in writing and approve all the nominations in Toto. Motion carried.

REPORTS:

Written reports accepted. (see above)

OLD BUSINESS:

None

NEW BUSINESS:

- 1. Council's Election Commission Nominees.** Chair Frailey read the nominees as follows: Martha Calico, Roger L. Johnson, Brant Shallenburger, and Raymond Vann. Councilor Cowan Watts made a motion to approve Roger Johnson and Martha Calico as our election commission nominees. Councilor Garvin seconded the motion. Councilor Glory Jordan requested confirmation that all nominees are tribal members. Councilor Cowan Watts stated they would like representation from the North not just around here. Mr. Johnson stated he is both proud and humbled by the nomination. He retired 2 years ago from CNE where he worked on the construction group for 4 years. Councilor Bill John Baker stated he would like to nominate Raymond Vann as well. Councilor Cowan Watts called point of order that there is a motion on the floor that needs to be voted up or down and she will not accept a friendly amendment. Councilor Bill John Baker inquired if this was the only choice take it or leave it. Councilor Cowan Watts stated it is a motion and you can nominate whom ever you want if this fails. Mr. Hembree stated division can be called on any motion. Councilor Bill John Baker called for division for each to be voted on separately. Councilor Cowan Watts called for both questions. Chair Frailey called for all in favor of Martha Calico. Motion

carried unanimously. Chair Frailey called for all in favor of Roger Johnson. Roll call is as follows:

Buel Anglen	Yea	Bill John Baker	Nay
Jack Baker	Yea	Harley Buzzard	Yea
Bradley Cobb	Yea	Joe Crittenden	Nay
Jodie Fishinghawk	Nay	Meredith Frailey	Yea
Janelle Fullbright	Nay	Don Garvin	Yea
Chuck Hoskin Jr.	Nay	Tina Glory Jordan	Nay
Curtis Snell	Yea	Chris Soap	Yea
David Thornton	Nay	Cara Cowan Watts	Yea

The motion for approval of the nomination of Roger Johnson passed with a vote of nine (9) yeas and seven (7) nays.

Councilor Cowan Watts moved to approve items 2 through 9 in Toto. Councilor Fishinghawk inquired as to if all of these nominees are Cherokee. Councilor Garvin seconded the motion for approval. Mr. Brad Carson stated he doesn't know Mr. Agent or Ms. Grigsby. All others are Cherokee citizens with the exception of Mr. Adelson. Ms. Knight spoke on the behalf of Mr. Agent and announced he is a tribal citizen. Numerous committee members announced Ms. Grigsby is a Cherokee citizen. Councilor Bill John Baker inquired as to the compensation of the board members for CNB. Mr. Carson stated he believed it to be \$12,000. a year. Councilor Bill John Baker inquired if he could be hired as a consultant or through a contract instead of a board member. Mr. Carson stated he is a very successful individual therefore he is not in the contracting or consulting business. Councilor Bill John Baker requested division of item 8 as a separate vote. Councilor Garvin called for the question. Chair Frailey called for all in favor of items 2 through 7 and item 9 in Toto. Motion carried.

- 2. A Resolution Confirming the Nomination of Dan Agent as a Board Member of the Editorial Board of Directors.**
- 3. A Resolution Confirming the Nomination of David Ballew as a Board Member of the Cherokee Nation Metalworks, LLC Board of Directors.**
- 4. A Resolution Confirming the Nomination of Adolph Lechtenberger as a Board Member of the Cherokee Nation Enterprises, LLC, Board of Directors.**
- 5. A Resolution Confirming the Nomination of Jackie Bob Martin as a Board Member of the Cherokee Nation Industries, LLC, Board of Directors.**
- 6. A Resolution Confirming the Nomination of Liz Grigsby as a Board Member of the Cherokee Nation Industries, LLC, Board of Directors.**
- 7. A Resolution Confirming the Nomination of Lloyd Armstrong as a Board Member of the Cherokee Nation Businesses, LLC, Board of Directors.**

- 8. A Resolution Confirming the Nomination of Thomas Adelson as a Board Member of the Cherokee Nation Businesses, LLC, Board of Directors.** Chair Frailey called for roll call. Mr. Carson requested time to say a few words. He stated a vast majority of the entity board members are Cherokee as they should be however he believes very passionately in this particular nomination. He stated what they lack in the board are people who are experienced in investing in new businesses and starting companies from scratch. He stated Mr. Adelson has this expertise. Councilor Cowan Watts expressed approval for this nomination stating we do need this expertise on the board at this time for CNB. Councilor Glory Jordan stated she can not support anyone who is non Cherokee being on a board. She stated she respects Mr. Carson and understands the need but out of two hundred and some thousand tribal citizens there is someone who is qualified for this position. She agreed this individual may be more appropriate as a consultant. Mr. Carson stated they have had non tribal members on the boards in the past. He stated it is the mission for every position to be held by Cherokees from secretaries to CEO's During the transition there is a growth period. Mr. Adelson is a leading venture capitalist which is a skill that is in short supply. Roll call is as follows:

Buel Anglen	Yea	Bill John Baker	Nay
Jack Baker	Yea	Harley Buzzard	Yea
Bradley Cobb	Yea	Joe Crittenden	Nay
Jodie Fishinghawk	Nay	Meredith Frailey	Yea
Janelle Fullbright	Yea	Don Garvin	Yea
Chuck Hoskin Jr.	Nay	Tina Glory Jordan	Nay
Curtis Snell	Yea	Chris Soap	Yea
David Thornton	Nay	Cara Cowan Watts	Yea

The motion for approval of Mr. Adelson carries with a vote of ten (10) yeas and six (6) nays.

- 9. A Resolution Confirming the Nomination of Adolph Lechtenberger as a Board Member of the Cherokee Nation Businesses, LLC, Board of Directors.**
- 10. (First item following approval of minutes)**
- 11. An Act Amending Legislative Act 23-04 Relating to Cherokee Nation Sovereign Immunity and Delegation of Authority to Execute Waiver for Business Activities.** Councilor Bill John Baker stated some time in the past the Council approved for the chief to be able to sign off on daily mundane operations without coming before the Council for a waiver. He stated it seems it has extended to the landfill and other items. Mr. Hembree stated this limits the waiver amount given to the Chief of \$500,000. Councilor Bill John Baker made a motion for approval of this Act. Councilor Cowan Watts seconded the motion. Mr. Carson voiced concern for the proposal. Companies that require bonding also require a waiver of sovereign immunity. Mr. Hembree stated we need to be cognizant of the constitution which states any waiver of sovereign immunity requires a resolution or enactment of the Tribal Council. He voiced concern that at this time there isn't a monetary limit to the chief's ability to

waive. He stated he doesn't know how it could become more lax. He stated the current legislation allows for a waiver of millions of dollars without the consent of the Council. Councilor Bill John Baker stated until the current legislation was passed the Chief always had to come before this body for a waiver which always kept the Council aware of what was going on. Ms. Knight stated it seems the intention of the Act is not to hold up routine contracting. She announced there are many contracts at the Nation that are routine that would be caught up in this dollar limit. For example the phone contract and the Microsoft contract are more than a half of a million. Councilor Bill John Baker called for the question. Roll call is as follows:

Buel Anglen	Nay	Bill John Baker	Yea
Jack Baker	Nay	Harley Buzzard	Yea
Bradley Cobb	Out of Room	Joe Crittenden	Yea
Jodie Fishinghawk	Yea	Meredith Frailey	Nay
Janelle Fullbright	Nay	Don Garvin	Nay
Chuck Hoskin Jr.	Yea	Tina Glory Jordan	Yea
Curtis Snell	Yea	Chris Soap	Nay
David Thornton	Yea	Cara Cowan Watts	Nay

The motion for approval carries with eight (8) yeas, seven (7) nays and one (1) out of the room at the time of the vote.

12. A Resolution Adopting Articles of Incorporation for the Cherokee Nation Community Corporation. Councilor Jack Baker announced this item is to be withdrawn and placed on the Community Service agenda for February.

13. (Second item following approval of minutes)

ANNOUNCEMENTS:

Chair Frailey announced the chili has arrived.

ADJOURNMENT:

Councilor Cowan Watts moved for adjournment. Councilor Thornton seconded the motion at 12:38 p.m. Motion carried.

APPROVAL / DISTRIBUTION:

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: Bill John Baker

Minutes attested and concurred by: Meredith Frailey

Date: 2/28/08