



# Council of the Cherokee Nation

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

## Meeting Minutes - Final RULES COMMITTEE

*Meredith Frailey, Chair*

*Recording Secretary, Shelli-Brittain*  
*Phone: 1-800-995-9465,*  
*E-mail: council-public@cherokee.org*

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Thursday, September 30, 2010

1:00 PM

Legislative Conference Room

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### CALL TO ORDER

**Chair Frailey called the meeting to order at 1:10 p.m.**

### INVOCATION

**Councilor Garvin gave the invocation.**

### ROLL CALL

**Present** 14 - Bill John Baker; Bradley Cobb; Buel Anglen; Chris Soap; Chuck Hoskin; David Thornton Sr. ; Don Garvin; Harley Buzzard; Jack D. Baker; Janelle Fullbright; Julia Coates; Meredith Frailey; S. Joe Crittenden and Tina Glory Jordan

**Late Arrival** 3 - Cara Cowan Watts; Curtis Snell and Jodie Fishinghawk

### APPROVAL OF MINUTES

**Councilor Jack D. Baker moved to approve the August 26th regular session minutes. Councilor Bill John Baker seconded the motion. Motion carried.**

### REPORTS:

Marshal Service - Sharon Wright

*Ms. Wright offered to answer questions from her report.*

Office of the Attorney General - Diane Hammons

*Mr. Morton reported for Attorney General Hammons. He announced the Majewski tribal case is set on the docket for tomorrow morning and the Nash case is set in tribal court next Wednesday. Councilor Hoskin Jr. inquired about the recent Freedmen ruling where the DOI asserted that the 1976 Constitution is the one they recognize. Mr. Morton stated he is not on that case but would request an update to be given next month. Councilor Hoskin further requested discussion next month regarding the UKB trust land issue.*

Election Commission - Roger Johnson

*Mr. Johnson offered to answer questions from the written report. He provided a memo pertaining to the additional precinct requests and commented he would prefer to discuss it during the discussion of the relative new business item.*

Tax Commission - Sharon Sweptson

*Mr. Andy Quetone offered to answer questions from the written report provided.*

Self-Governance - Vickie Hanvey

*Ms. Hanvey announced they received some additional Recovery Act funding with the largest amount for the Roads program in the amount of \$2ml and \$26,000 for child care. She reported they attended the Roads Consultation meeting in Oklahoma City and commented it was the largest attended meeting held Nationally. The roads funding formula changes will begin implementation in 2011 with full implementation in 2012. They have issues with the changes and she announced Oklahoma would be one of the largest affected by the formula change. The Oklahoma Tribal Transportation Council submitted a resolution in opposition of the formula change. Councilor Buzzard requested a copy of the resolution. The Senate Indian Affairs Committee has announced they will hold a field hearing to examine tribal transportation in Indian Country on October 15th on the Flat Head Reservation. Ms. Hanvey announced they have been working for a number of years to try to pass amendments to Title IV to get the DOI to the same standards as IHS.*

Gaming Commission - Jamie Hummingbird

*Mr. Hummingbird provided a copy of his report. The National Tribal Gaming Commissioners and Regulators Fall Conference will be held in Green Bay next week. He announced he would be up for re-election as Chairman of the organization. He offered to provide information once received regarding their spring conference and extended invitations to any who would like to attend.*

Codification - Todd Hembree

*Mr. Hembree reported they are still waiting for their quote from West. He has not met with Mr. Morton this month on codification. He gave appreciation to the interns and their continued efforts to help.*

Youth Tribal Council -

*No one present to report.*

## OLD BUSINESS

1. AN ACT PROHIBITING ELECTED OFFICIALS FROM APPEARING OR PARTICIPATING IN MEDIA ADVERTISEMENTS CONDUCTED OR PAID FOR BY CHEROKEE NATION OR ITS ENTITIES DURING ELECTION PERIODS  
**Councilor Hoskin Jr. moved to table for one month. Councilor Glory-Jordan seconded the motion. Motion carried.**

2. A LEGISLATIVE ACT RELATED TO TITLE 26 "ELECTIONS" AS AMENDED BY LEGISLATIVE ACT 06-10 AND LEGISLATIVE ACT 22-10, ASSIGNING SEAT DESIGNATIONS AND SETTING EFFECTIVE DATE

**Councilor Garvin moved to approve. Councilor Fullbright seconded the motion. Motion carried by acclamation.**

#### NEW BUSINESS

1. A RESOLUTION AUTHORIZING CHEROKEE NATION TO BECOME A MEMBER OF THE NATIONAL CONGRESS OF AMERICAN INDIANS AND TO APPOINT THE TRIBAL DELEGATE AND ALTERNATES

*Councilor Cowan Watts commented there could be an amendment to the list presented at the Council meeting if passed to add additional employees.*

**Councilor Cowan Watts moved to approve. Councilor Crittenden seconded the motion. Motion carried.**

**Councilor Cowan Watts made a motion to amend the agenda to include the veteran's center resolution. Councilor Bill John Baker seconded the motion. Motion carried.**

2. A RESOLUTION AUTHORIZING A BOXING/MIXED MARTIAL ARTS COMPACT WITH THE STATE OF OKLAHOMA

*Chair Frailey announced CNE is proposing to hold sporting events including boxing and martial arts. To ensure proper sanctioning and regulations of these events it was considered to be most advantageous to enter into a compact with the State of Oklahoma. The compact is for one year and has consecutive terms of one year unless either party gives a thirty day notice to terminate. The events would be regulated by the State under the Professional Boxing Safety Act and the State Athletic Commission Act. If there should be a dispute and negotiations fail, binding arbitration would be entered into and subject only to the federal district court within that jurisdiction. Councilor Cobb moved to approve. Councilor Cowan Watts seconded the motion. Councilor Fishinghawk inquired why the Potawatomie's weren't looked at for an agreement. Mr. Dave Stewart stated they looked at the State because of their history with these events. Councilor Glory-Jordan questioned waiving our sovereign immunity. Mr. Bob Huffman stated we aren't waiving our sovereign immunity we are agreeing to binding arbitration for a limited purpose. Mr. Stewart commented regardless of what organization was chosen they would have to agree to some binding arbitration. Chair Frailey reported paragraph six contains a hold harmless provision. Mr. Hummingbird stated the federal statutes that govern boxing for Indian tribes there are only two ways it can be done outside of your own commission. One way is to compact with the state in which you reside or contract with the American Boxing Commission. Agreements with other jurisdictions such as a tribe to a tribe can't be done. Councilor Glory-Jordan inquired if it is essential to pass this resolution or if it could be tabled for one month to consider other options. Mr. Stewart stated they have an event scheduled in November. He commented the passing of this wouldn't preclude them from working with the Potawatomie's if they have a system. Councilor Cowan Watts inquired about our Gaming Commission oversight and the logistics. Mr. Hummingbird stated as this compact is written they would not have a hand in any of the events themselves. They would have involvement in the emergency preparation in regard to the security and emergency*

vehicles. Mr. Stewart the compact with the State requires the State to ensure all of the procedures and precautions are in place. They are required to have the doctors, the licenses and so forth. Councilor Cowan Watts inquired if they assume all of the liability on our property whether it is tribal trust land or fee simple. Chair Frailey commented under the compact the State must comply with both the State and Federal laws. Councilor Glory-Jordan commented paragraph six reads as though we are held liable if the State makes a mistake. She suggested paragraph six be removed. Mr. Stewart commented it isn't negotiable. Mr. Todd Hembree commented tickets have been sold to the event scheduled on November 12th. He suggested moving this resolution forward to the Council meeting as there would be time to obtain answers to the questions brought forward. If questions still remain at Full Council it could be tabled at that time.

**The motion to approve carried with Councilor Garvin opposed.**

3. A LEGISLATIVE ACT AMENDING TITLE 68 - REVENUE AND TAXATION OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING CHAPTER 3 SECTION 31 - DEFINITIONS; AND ADDING NEW SECTION 35
- Mr. Andy Quetone stated this is for special event permits. It creates a flat fee to the event promoter. Councilor Anglen moved to approve. Councilor Cobb seconded the motion. A typographical error was pointed out in §35B where fifty dollars needs to be changed to one hundred dollars.*

**The motion to approve carried by acclamation.**

4. A RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE IX OF THE CHEROKEE NATION CONSTITUTION, PURSUANT TO ARTICLE XV SECTION 2, TO REQUIRE THAT ALL BALLOTS CAST IN CHEROKEE NATION ELECTIONS BE DONE IN PERSON AND AT POLLING STATIONS WITHIN THE JURISDICTIONAL BOUNDARIES OF THE CHEROKEE NATION
- Councilor Fishinghawk moved to table for one month. Councilor Cowan Watts seconded the motion. Motion carried.**

5. A RESOLUTION REQUESTING APPROVAL OF THE LOCATION OF EACH PRECINCT FOR THE 2011 CHEROKEE NATION ELECTION
- Councilor Cowan Watts provided maps of the 2007 precincts and the thirty mile drive radius. The black with no yellow overlay on the map indicates a high density population within that zip code that is not being served by a precinct. Councilor Cowan Watts moved to approve. Councilor Coates seconded the motion. Councilor Cowan Watts requested to amend her resolution to add a precinct in Oologah. Councilor Coates accepted the amendment. Councilor Hoskin Jr. offered a friendly amendment to add Afton. Councilor Garvin offered a friendly amendment to add Muskogee. Councilor Fishinghawk offered a friendly amendment to add Bell. All friendly amendments were accepted. Mr. Roger Johnson of the Election Commission read a letter from the Commission into the record. He stated they believe the Council adding precincts at this time is unconstitutional. Councilor Hoskin Jr. gave appreciation to the work of the Commission. He stated we want voters to have access to the polls. The letter refers to confusing voters by adding precincts. He inquired how providing precincts closer to voters would be confusing. Mr. Johnson used Afton as an example in that they have changed districts and that most of the voters from the last election are not within that precinct area now. Councilor Hoskin Jr. respectfully disagreed in their ascertain that the law is unconstitutional and with their policy decision to eliminate some of the precincts. Mr. Johnson stated they attended the July meeting and inquired if any of the Council had issues with the previously submitted the list of precinct locations. He commented Councilor Watts is the only one who responded. He stated it is the job of the Commission and the intent*

of the Constitution for them to administer the election. The location of the precincts is part of the administrative duties of the Commission. Councilor Jack D. Baker took offense to the interpretation of the Constitution by the Election Commission. It stated the Election Commission shall be charged with the administration of all Cherokee Nation elections in accordance with all election laws. This Legislative body has the authority to establish the precincts. Councilor Soap offered a friendly amendment to include Spavinaw as a precinct. Councilor Cowan Watts commented the responsibility is to increase voter participation. She welcomed additional sponsors to the resolution. Mr. Hembree agreed with Councilor Baker in that the Commission is to administer in accordance with election laws. He stated LA-06-10 reads in section 61 that the Commission shall establish precinct locations subject to approval by Council resolution. Councilor Fullbright stated the goal should be better voter participation. She requested a precinct in Belfonte/Nicutt and in Chewey. The friendly amendment was accepted. Ms. Patsy Morton of the Election Commission voiced concern for the time factors. Ms. Martha Calico of the Election Commission stated if something isn't done soon we would have a hard time having an election. The election records are still nine districts until the court rules. She commented letters would have to be sent to registered voters around the new proposed precincts to notify them of the precinct and ask if they wish to change their precinct. She stated this process would take at least thirty days. Councilor Cowan Watts gave appreciation to the Election Commission and the large task they have had to undertake and agreed there are issues outstanding. None of these issues affect the idea that our jurisdictional boundaries do not change or that the population deserves to have a precinct as close as possible to them. She suggested discussing a budget change for staffing additional people at the added precincts during the next Executive & Finance meeting. Mr. Johnson stated they have a requirement to hold a special board meeting to have the Commission vote on the additional precinct locations and then re-present it to the Council. Mr. Hembree stated if this resolution passes committee then passes Council these are the precincts. Councilor Glory-Jordan inquired as to the cost per precinct. Mr. Johnson replied \$750 per location.

**The motion to approve carried with Councilors Cobb and Frailey opposed.**

6.

AN ACT AMENDING LEGISLATIVE ACT 06-10, AS AMENDED BY LA#22-10; REVISING TITLE 26 ("ELECTIONS") OF THE CHEROKEE NATION CODE ANNOTATED; REPEALING CHAPTER 4 § 31 (B)(1); AND DECLARING AN EMERGENCY

Councilor Cobb stated item 6 and 7 are linked together therefore discussion of one must include the other. One of the Acts seeks to amend the election code by adding provisions for overlapping elected terms. The other seeks to amend the election code by repealing a section of the current law. He stated we follow a small version of the Hatch Act which he provided. The Hatch Act spells out what is and isn't legal regarding federal employees' involvement in political campaigns and elections. The Hatch Act bars federal employees from running for political office. Article 1 Section 2 and 3 of the U.S. Constitution the qualifications clause deals only with age, citizenship and place of residence. He referred to and read portions of a few different federal court cases. He commented the quandary with the federal government is the same with the Cherokee Nation. If you're a constitutionalist it is entirely possible you would think the Hatch Act is illegal. If you're someone that believes law can trump the Constitution without an amendment then the Hatch Act is legal. Article 6 Section 3 of the Cherokee Nation Constitution deals with qualification requirements and deals only with age, citizenship and place of residence. The Cherokee Nation Constitution does not state an elected official must resign from their position or that an employee of the Cherokee Nation must resign to run for political office. He referred to Mr. Hembree's memo and commented in regard to the elected official side it would be referred to as a resign to run amendment. If the act pertaining to elected officials passes it is entirely possible without a resign to run amendment that it would violate

*the Cherokee Nation Constitution. If the employee candidate act does not pass it is entirely possible that the election law is in violation of the Cherokee Nation Constitution. He stated the reason for bringing forth these two pieces of legislation is that he doesn't believe the discussion and passage of law can occur without both sides of the coin being exposed. If you are in opposition to the act pertaining to elected officials and overlapping terms you must concede that part of your opposition centers on if passed it possibly violates the Constitution. If you also oppose the employee candidate act they you have to concede that your concern over violations of the Cherokee Nation Constitution extend to only as far as it effects elected officials and not the general citizenry. He moved to approve item 6 pertaining to employee candidates. Councilor Cowan Watts seconded the motion. Councilor Hoskin Jr. commented the employee candidate act is worthy of consideration. The Hatch Act is something in which he labors as he is a federal employee. He questioned the link between agenda item 6 the employee candidate act and item 7 the elected official act. He commented the only reason for item 7 and its push by the Principal Chief is because his chief opponent is Councilman Bill John Baker who is in the middle of a term. Councilor Cobb stated the employee issue needs to be solved. He stated they are linked due to the unfairness of an elected official being able to maintain their position while running for a different office while employees can't. Mr. Hembree suggested the option for an employee not to resign but to take a unpaid leave of absence on the day of filing. Councilor Fullbright commented employees should be able to run for office while maintaining their position. Councilor Hoskin Jr. stated if this is to be modeled after the Hatch Act the language in Section 31B1 would need to be stricken. Some language would be needed stating employees who seed office must not engage in political activities during working hours. He inquired if item 6 was passed and do nothing with item 7 would we be consistent. Councilor Cobb agreed. Councilor Soap requested to yield some of his time to Michael Botello our Human Resources Group Lead to comment on how this may affect our employees. Mr. Botello stated there isn't an HR policy to prevent an employee from running for political office. The Act does prevent an employee from doing so. In regard to a leave of absence he stated an employee is not automatically entitled. Councilor Cowan Watts stated she reviewed this as two separate issues but agreed they are intertwined in that fairness must be accessed from everyone's perspective. The ultimate task is what is fair to the tribe in serving the people. On the employee level it is unfair to the employee, their manager and the tribe to try to monitor them on tribal time. In regard to the leave of absence suggestion she questioned the performance of the duties while the leave was being taken. Councilor Garvin stated there is enough time to maintain a job and campaign and also questioned who would perform the job duties of the employee candidate. Councilor Crittenden stated he was a federal employee and subject to the Hatch Act when he first ran for Council. He stated responsible people who have a desire to serve our tribe and people will take care of the Nation's business once they are on the clock.*

**The motion to approve failed with the following roll call vote:**

**Yea:** 6 - Bill John Baker; Bradley Cobb; Chuck Hoskin; Jodie Fishinghawk; S. Joe Crittenden and Tina Glory Jordan

**Nay:** 9 - Buel Anglen; Cara Cowan Watts; David Thornton Sr. ; Don Garvin; Harley Buzzard; Jack D. Baker; Janelle Fullbright; Julia Coates and Meredith Frailey

**Abstain:** 2 - Chris Soap and Curtis Snell

- 7. AN ACT AMENDING LEGISLATIVE ACT 06-10, AS AMENDED BY LA#22-10; REVISING TITLE 26 ("ELECTIONS") OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING CHAPTER 4 §§ 31, 36 AND 37; ADDING PROVISIONS FOR OVERLAPPING TERMS; AND DECLARING AN EMERGENCY  
**Councilor Cobb withdrew this item.**
  
- 8. LA-37-05 AND LA-11-10; ACT RELATING TO CREATION OF JOBS GROWTH (Discussion Only)  
**Councilor Hoskin tabled for one month.**
  
- 9. TRIBAL COUNCIL TRAVEL EXPENSE POLICY (Discussion only)  
**At the request of Chair Frailey Councilor Anglen moved to table. Councilor Crittenden seconded the motion. Motion carried.**
  
- 10. A RESOLUTION REQUESTING THE DONATION OF ONE FLAT SCREEN MONITOR FOR COMPUTER, THREE HARD DRIVES, FIVE WIRELESS KEYBOARDS AND FIVE WIRELESS MICE TO THE CLAREMORE VETERANS CENTER IN CLAREMORE, OKLAHOMA  
**Councilor Cowan Watts moved to approve. Councilor Crittenden seconded the motion. Motion carried.**

ANNOUNCEMENTS

ADJOURNMENT

**Councilor Crittenden moved to adjourn. Councilor Cowan Watts seconded the motion. Motion carried at 3:03 p.m.**

STAFF PRESENT:

<i>Andy Quetone</i>	<i>Nason Morton</i>	<i>Jamie Hummingbird</i>
<i>Mike Miller</i>	<i>Michael Botello</i>	<i>Paula Ragsdale</i>
<i>Michael Lynn</i>	<i>Doug Evans</i>	<i>Diane Kelley</i>
<i>Callie Catcher</i>		

VISITORS PRESENT:

<i>Patsy Morton</i>	<i>Brenda Walker</i>	<i>Martha Calico</i>
<i>Bob Huffman</i>	<i>Charles Dry</i>	<i>Roger Johnson</i>
<i>Gina Olaya</i>	<i>Kelly Cobb</i>	<i>David Stewart</i>
<i>Todd Hembree</i>	<i>Curtis Rohr</i>	<i>Shawn Slaton</i>
<i>Ollie Starr</i>	<i>David Walkingstick</i>	