



# 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, April 29, 2010

1:00 PM

Legislative Conference Room

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### CALL TO ORDER

**Chair Frailey called the meeting to order at 1:07 p.m.**

### INVOCATION

**Councilor Cobb gave the invocation.**

### ROLL CALL

**Present** 15 - Bill John Baker; Bradley Cobb; Buel Anglen; Cara Cowan Watts; Chris Soap; Chuck Hoskin; Curtis Snell; David Thornton Sr. ; Don Garvin; Harley Buzzard; Jack D. Baker; Jodie Fishinghawk; Meredith Frailey; S. Joe Crittenden and Tina Glory Jordan

**Late Arrival** 2 - Janelle Fullbright and Julia Coates

### APPROVAL OF MINUTES

**Councilor Jack D. Baker made a motion to approve the March 25th regular session minutes. Councilor Garvin seconded the motion. Motion carried.**

### REPORTS:

**Councilor Glory-Jordan requested to dispense with the reports as all departments have submitted written reports. Chair Frailey inquired if there were objections to dispensing the reports or if there were any questions pertaining to the reports. Councilor Cowan Watts replied she had questions from the various reports.**

1. Marshal Service - Sharon Wright

*Councilor Thornton inquired if the Marshal's could when called out on accidents or on patrol make note of places where signs could be placed in warning as a tool to help deter future accidents. Ms. Wright stated the accident reports go to DPS and if there are issues at that location statistically signs are then placed. She stated she would inquire if they could assist in anyway.*

*Councilor Hoskin Jr. inquired if the Marshal Patrol vehicles are GSA or tribal and the process for surplus patrol vehicles. Ms. Wright stated some have been donated in the past but now they use them to the point of not being usable. Once they have several at the not usable point they are usually bid out for salvage.*

2. Office of the Attorney General - Diane Hammons

*Councilor Soap stated he has been made aware of citizens fishing without a license has been given the option to purchase a license for \$50 instead of a citation. He inquired if they could be reimbursed the fee or if this was another option to determine if a license is needed. Attorney General Diane Hammons commented this is a provision under Oklahoma law. The purchase of the license on spot option is more than a regular license fee but is less than citation and court fees. The license is good for 30 days. She stated she was unsure about the reimbursement.*

3. GEG Investigation Report - Diane Hammons

4. Election Commission - Roger Johnson

*No questions were asked of the Election Commission*

5. Tax Commission - Sharon Swepton

*No questions were asked of the Tax Commission.*

6. Self-Governance - Vickie Hanvey

*Councilor Cobb requested Ms. Hanvey give an update on the handout provided pertaining to the UKB and Self-Governance. Ms. Hanvey commented one of the criteria to apply is to have clean audits for the previous three years. They have been able to meet this requirement and now any 638 contract they have could now be put into a self-governance agreement. They have applied for the Planning and Negotiation Grant which is subject to appropriations. Councilor Cowan Watts inquired how it could impact the Cherokee Nation. Ms. Hanvey commented if they meet the criteria they are able to go into self-governance. She stated at this point it is just DOI 638 contracts. She commented if there is anything that would infringe upon our rights or funding we would challenge it.*

7. Gaming Commission - Jamie Hummingbird

*Councilor Cowan Watts inquired about news reports pertaining tribes not properly paying compact payments. Mr. Hummingbird commented it was sparked by the Horseman's Association as they were reviewing revenue received from the three tribes in the Tulsa area. The issue didn't apply to the Osage or the Cherokee. The Creek's were called out for inappropriate reductions from the revenues that are used to calculate the fees to the OHRC, State and Fair Meadows. Information was provided both to the Administration and the Council outlining in detail what our Gaming Commission has done to ensure the proper amount of fees are calculated and paid. Mr. Hummingbird commented the Whitehouse announced late yesterday that they intent to nominate Tracy Stevens for the NICG Chairmanship.*

8. Codification - Todd Hembree

*Mr. Hembree announced he and Mr. Morton met yesterday and they still await the changes to Title 4. They do not believe the changes will be major to Title 4 so they*

are going to go ahead and submit for quotes from both West Law and Lexus based on estimations.

## OLD BUSINESS

*None pending.*

## NEW BUSINESS

1. A RESOLUTION REQUESTING THE DONATION OF ONE ULTRASOUND SYSTEM TO THE LIGHTHOUSE PREGNANCY CENTER IN JAY, OKLAHOMA  
**Councilor Buzzard moved to approve. Councilor Cobb seconded the motion. Motion carried.**
  
2. A RESOLUTION AUTHORIZING THE INCURRING OF INDEBTEDNESS IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$24,000,000.00 AND AUTHORIZING A GENERAL OBLIGATION CREDIT FACILITY AND OTHER DOCUMENTS AS MAY BE NECESSARY OR REQUIRED; AUTHORIZING THE LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE CHEROKEE NATION IN CONNECTION WITH THE CREDIT FACILITY; PROVIDING FOR THE COMPLIANCE WITH APPLICABLE FEDERAL LAW RELATING TO THE EXCLUSION FROM GROSS INCOME FOR FEDERAL INCOME TAXATION PURPOSES OF INTEREST ON THE FACILITY; CONTAINING OTHER PROVISIONS RELATING THERETO; AND DECLARING AN EMERGENCY

*Chair Frailey announced the resolution handed out today with changes is to be substituted for the item in the packet. Councilor Hoskin Jr. stated this resolution is a limited waiver of sovereign immunity to finance the Vinita Clinic through a joint venture project in the amount of \$24ml. He amended handout changes the amount from \$30ml to \$24ml. Councilor Hoskin Jr. moved to approve. Councilor Bill John Baker seconded the motion.*

*Ms. Callie Catcher announced they have entered into further negotiations as the Health Group has recently received additional funding and will be placing \$6ml of those funds toward this project. The financing will be \$24ml for this project. Due to the last minute change they are allowing the two banks who were finalists to submit there best and final offer. Ms. Catcher stated this only pledges a security interest in the motor fuels tax education trust. The resolution at this time refers to a certain lender instead of a specific bank but the correct lender will be inserted prior to the Council meeting. Councilor Cowan Watts inquired what the \$6ml would have been used for if not this joint venture. She further stated in the past with a waiver of sovereign immunity the lender is specified and the contract is available for review. Ms. Catcher stated this resolution agrees to a limited waiver with the final terms to be negotiated by the Principal Chief within the limits set by Legislative Act. She stated both she and Mr. Evans met with Melissa Gower and because their carryover was more than anticipated, the receipt of additional funding through contract support and this is a priority project they agreed to put the \$6ml toward this project. Councilor Garvin inquired as to the amount of funds in the motor fuel tax education trust. Ms. Catcher estimated \$24ml. Mr. Evans stated if this is approved by the body we can attach as collateral and invest it out to the length of the term of the note which will go from a 1% return on \$24ml to around a 3% return. Councilor Buzzard inquired as to the anticipated number of third party billing patients at this clinic. Ms. Catcher stated it is projected to be about the same at the Muskogee Clinic.*

**The motion to approve carried unanimously.**

3. AN ACT AMENDING LEGISLATIVE ACT 35-02 THE CHEROKEE NATION GENERAL CORPORATION ACT CREATING AN ADVISORY BOARD OF DIRECTORS AND SETTING TERM LIMITS ON DIRECTORS ON CORPORATIONS IN WHICH THE CHEROKEE NATION IS A MAJORITY SHAREHOLDER

*Councilor Cobb stated this is an amendment to LA 35-02. The CNE, CNI and CNB boards are being combined into one board. This Act allows three advisory board members of the Cherokee Nation Tribal Council. It also adds language to allow other Council members to attend board meetings who are not advisory members, for the purpose of observing rather than discussing or acting upon a matter. This is not to be construed as a "meeting" of the Tribal Council under the Freedom of Information and Privacy Rights Act, regardless of the number of Tribal Council members present at such meeting. Councilor Cobb moved to approve. Councilor Jack D. Baker seconded the motion.*

*Councilor Cowan Watts inquired if this is in compliance with FOIA. Mr. Todd Hembree, Council Attorney, announced this additional language was brought forward by the Attorney General's office. He stated they believe the language would alleviate any FOIA concerns of the Council. This language allows any Council member to attend as long as they do not discuss or vote on any matter. Councilor Hoskin requested confirmation that this can not be considered a meeting of the Council. Attorney General Hammons agreed and stated "meeting" is broadly defined in FOIA and this puts a construction on that delineating that this will not under those circumstances qualify as a meeting. Councilor Glory-Jordan inquired about the combing of the three boards and the three advisory board members per board. Mr. Hembree stated this language reduces the advisory board to three members. Councilor Bill John Baker inquired if only four Council members were present at a board meeting, with no risk of a quorum, could the non advisory board member ask questions. Mr. Hembree commented that is up to the Chair of the meeting. Councilor Hoskin Jr. disagreed and commented once discussion begins they leave the safe harbor within the language. Councilor Glory-Jordan commented the need to attend the meeting wouldn't exist if the minutes of the meetings were provided on a monthly basis. She requested the Speaker and Ms. Ragsdale make formal request for these minutes.*

*Councilor Cowan Watts made a motion to change from three to five advisory board members. Councilor Anglen seconded the motion. Councilor Cowan Watts stated she didn't want anyone to be excluded from participating in the meeting. Councilor Anglen voiced concern for not being able to participate in executive session if not an advisory board member. Councilor Bill John Baker commented he still has issue with more than eight Council members being together even with this language. In the past the boards haven't excluded non advisory members to participate in executive sessions.*

**The motion to amend to five (5) advisory board members carried with the following roll call vote:**

**Yea:** 10 - Buel Anglen; Cara Cowan Watts; Chuck Hoskin; Curtis Snell; Don Garvin; Harley Buzzard; Janelle Fullbright; Jodie Fishinghawk; S. Joe Crittenden and Tina Glory Jordan

**Nay:** 6 - Bill John Baker; Bradley Cobb; Chris Soap; David Thornton Sr. ; Jack D. Baker and Meredith Frailey

**Not In Room:** 1 - Julia Coates

**The motion to approve as amended carried with Councilor Thornton opposed.**

4. A LEGISLATIVE ACT RELATED TO TITLE 26 "ELECTIONS", AS AMENDED BY LA#07-97, LA#39-05 AND LA#06-10; AMENDING REVISIONS FOR APPORTIONMENT

*Councilor Glory-Jordan made a motion to consider and vote on this action. Councilor Fishinghawk seconded the motion. Chair Frailey announced the item for consideration is the handed out version not the version in the packet. Councilor Cowan Watts stated in her research she discovered the entire section pertaining to districting and apportionment was omitted from the Election Law Reform. She stated we currently do not have a law to govern the process for citizenship data and apportionment. This legislation puts back the wording for apportionment with the data being the registrar's citizenship data that would include everybody that is registered in the Cherokee Nation with a blue card and whose last known address is in the Cherokee Nation. This language specifically describes the traditional method of how we apportion and look at citizenship data for the past twenty years. This would include unverifiable or bad addresses. This legislation clearly provides a time line for actions. She stated this doesn't set new district lines. She commented if this were to go into law today and we accepted the Courts decision we would apportion based on the current population from the registrar. Councilor Hoskin Jr. called for the question. Councilor Cowan Watts commented Councilor Coates is attempting to call in and is unable to get through. Mr. Hembree provided explanation that calling for the question is a vote to end debate and a vote needs to be taken on that question itself. He stated in regard to Councilor Coates the Remote Attendance Act requires that there be audio and video compliance to allow full discussion. He stated there needs to be a vote on the call for the question.*

**The motion to call for the question and end debate failed with the following roll call vote:**

**Yea:** 8 - Chuck Hoskin; Curtis Snell; David Thornton Sr. ; Jack D. Baker; Jodie Fishinghawk; Meredith Frailey; S. Joe Crittenden and Tina Glory Jordan

**Nay:** 8 - Bill John Baker; Bradley Cobb; Buel Anglen; Cara Cowan Watts; Chris Soap; Don Garvin; Harley Buzzard and Janelle Fullbright

**Not In Room:** 1 - Julia Coates

*Councilor Glory-Jordan raised a Constitutional question about using whole zip codes within the fourteen county area because of counting citizens living outside the jurisdictional area. If these border living At Large citizens are counted within the boundaries are they going to be eligible for benefits as if they lived within the boundaries. She further questioned a lawsuit if this method is used by the citizens who are used to puff up numbers but aren't eligible for benefits. Councilor Buzzard commented for the last several years the citizens outside of the districts have been counted through the registration department. He stated he wants the numbers to be fair to everybody and realizes along the way a district may loose a seat. Councilor Bill John Baker stated he was not in support of this Act. He stated the Constitution is very clear and says representative districts shall be established within the boundaries and have reasonably equal citizenship among the districts. People outside of the districts are citizens At Large and have two Councilors. If this Act was passed today a lawsuit would be filed tomorrow. Councilor Bill John Baker stated the Council isn't the body who apportions it is the Election Commission who apportions. He commented citizens living outside of the boundaries can not get a tag and can be pin pointed to determine they live outside of the jurisdiction. He stated if for the past several years we have used citizens outside the fourteen counties then we have been totally against the Constitution. Legislation that says you have a zip code that comes into the Nation then the entire zip code is counted is puffery. This will hurt the interior non bordering counties. Councilor Hoskin Jr. stated he is opposed to this legislation, it is unconstitutional on its face, and is bad public policy. The*

Constitutional issues outlined by Councilors Glory-Jordan and Baker are so real that there is no doubt a lawsuit would be filed. With respect to this being bad policy he said some guidance needs to be given in the apportionment process using a fine chisel and hammer. This legislation takes a sledge hammer to the process. Councilor Cobb voiced concern for citizens not having the right to vote just because they had returned mail. Mr. Hembree stated Mr. David Justice wrote a letter dated the 5th of February setting the Cherokee Nation population within the fourteen county area at approximately 102,000 citizens. On February 26th Mr. Justice revised his letter stating the previous number was wrong that there are approximately 110,000 citizens including bad addresses. This legislation doesn't have anything to do with bad addresses. If this Act were to pass you would have a figure of approximately 122,000 citizens which is above and beyond any figure that the registration department or Geo Data would provide. In regard to Constitutionality Mr. Hembree as the Council Attorney felt compelled to state this legislation is unconstitutional. If passed it would require the Tribal Council to include citizens to be counted in the jurisdictional boundaries that we know are not. There are twenty-three border zip codes all have good geo coding except five. He gave an example of border zip code 74354 having 2,463 citizens and good geo coding. A known fact is 266 of these citizens reside within the jurisdictional boundaries and that 2,197 do not reside within the boundaries. This Act would require the 2,197 citizens to be counted within the jurisdiction. This is not constitutional. He stated we must use the best resources at our disposal to determine where the people live. At the very most there can only be 110,000 citizens within the jurisdictional boundaries. Councilor Cobb stated this problem has been kicked around for the past two decades and the problem needs to be solved. Councilor Thornton stated to solve the problem the Constitution needs to be changed. He read two portions of the Constitution and stated the voters were given a chance to pick where they chose to vote. There is nothing said about zip codes or 911 addresses. He stated we voted to let people outside the district take part within our educational funding but we didn't break the Constitution. Passing this Act will break the Constitution. Councilor Crittenden commented it is wrong to not include an address because it came back as sometimes they are miss delivered or the person has moved but still remains within the district. He stated we may not ever get the numbers exactly perfect but we need to try for the people. Councilor Soap agreed something is needed on paper to assist in further defining the gray areas. He reminded everyone of a system where most if not everyone gains a seat. Councilor Cowan Watts commented there seems to be confusion regarding the data. She stated this Act defines how and where the data comes from. This doesn't have anything to do with the Election Commissions data This Act would use the data from the Tribal Registrar. She stated this description is how data has been done for the last twenty years when it came to apportionment. She commented while we have new tools and technology that could determine if citizens were in or out of the boundaries it wouldn't be fair to not be able to do it for all citizens. Councilor Cowan Watts stated all districts and areas need to be treated the same. Until new monies and a new initiative are put forth to do a census and assist counties in 911 addressing we can't be fair and equitable. Councilor Glory-Jordan pointed out that this may have been something looked at twenty years ago but we are now under a new Constitution. The 1999 Constitution gives the At Large people two representatives. We need to operate under the 1999 Constitution and this legislation would be in violation. Councilor Cobb requested discussion regarding the 122,000 number stated in earlier discussion. Mr. Hembree stated if the surrounding zip codes and count everyone within the figures would total 122,427 citizens within the boundaries of the Cherokee Nation. The Cherokee Nation Registrar's data for the same time period is 108,000 citizens, David Justices' data for February 5th is 102,000 and his data for February 26th using all of the bad addresses is 110,000. There is not a figure that comes close to 122,000 and this makes it a very suspect piece of legislation. Councilor Cowan Watts stated the Court set a May 2009 date in

which we do not have access to that data. If this Act is passed the current nine districts would remain and we would use the May 2009 data per the guidelines in this Act then we would know. She stated we need to fair and consistent and pass this legislation. Councilor Thornton commended the Election Commission and the Tax Commission for the jobs they have done. To obtain a car tag you must show proof of your physical address even if there is no doubt you live within the boundaries. If the tag office can do this so can we. Councilor Fishinghawk voiced concern for not using the most accurate data available. She read portions of the April 14, 2008 minutes where comments were made by David Justice and Councilors. Some of the comments included: using the 911 along the boundaries and zip codes for the rest he agreed this is the most accurate, we are not doing our duty if we do not leave the citizens outside the boundaries to the Councilors At Large, the combined method is the most accurate, the Constitution states we shall establish representative districts which are inside the boundaries of the Cherokee Nation so those outside the boundaries can not be included in the Cherokee Nation boundaries, we have taken pretty extensive steps to make sure we didn't include anyone outside the fourteen county jurisdictional area except where the four western bordered zips were that they were unsure of, and it is unconstitutional to accept a single sole that is outside the boundaries. She stated the difference in a felony and a misdemeanor is the word knowingly. She stated the top five vote getters in elections are Cherokee, Adair, Delaware, Sequoyah and Mayes. The top five counties for car tags not including the two mile buffer zone are Cherokee, Adair, Delaware, Mayes and Sequoyah. She stated the clinic with the most visits is the Wilma P. Mankiller clinic. She stated this is bad legislation. Councilor Bill John Baker called for the question. Councilor Crittenden seconded the motion.

**The motion for approval failed by the following vote:**

- Yea:** 8 - Buel Anglen; Cara Cowan Watts; Chris Soap; Don Garvin; Harley Buzzard; Jack D. Baker; Janelle Fullbright and Julia Coates
- Nay:** 9 - Bill John Baker; Bradley Cobb; Chuck Hoskin; Curtis Snell; David Thornton Sr. ; Jodie Fishinghawk; Meredith Frailey; S. Joe Crittenden and Tina Glory Jordan

**ANNOUNCEMENTS**

*Councilor Buzzard announced he and Councilor Snell are having a community meeting May 4th at 6:30 p.m. at the Grove Community Center.*

**ADJOURNMENT**

**Councilor Anglen moved to adjourn. Councilor Jack D. Baker seconded the motion. Motion carried at 3:08 p.m.**

**STAFF PRESENT:**

Sharon Swepston	Sharon Wright	Paula Ragsdale
Melanie Knight	Jamie Hummingbird	Guy Quetone
Diane Hammons	Vickie Hanvey	Callie Catcher
Sara Hill	Todd Enlow	

VISITORS PRESENT:

*Lloyd Cole*  
*Ollie Starr*

*Todd Hembree*

*Martha Calico*