



Council of the Cherokee Nation

Meeting Minutes Rules Sub Committee

Monday, August 11, 2008

3:00 PM

Legislative Conference Room

Election Law Reform

CALL TO ORDER

Chair Frailey called the meeting to order at 3:05 p.m.

INVOCATION

Councilor Garvin gave the invocation.

ROLL CALL

Present 11 - Meredith Frailey; Jack D. Baker; Curtis Snell; Buel Anglen; Harley Buzzard; Chuck Hoskin, Jr. ; Cara Cowan Watts; Bill John Baker; Tina Glory Jordan; Don Garvin and Chris Soap

Late Arrival 5 - Julia Coates; Janelle Fullbright; S. Joe Crittenden; Bradley Cobb and Jodie Fishinghawk

CONSTITUTIONAL AMENDMENT RECOMMENDATION FOR REPLACEMENT OF COUNCIL MEMBER DUE TO REMOVAL, DEATH, RESIGNATION OR DISABILITY

Sponsors: Councilor Baker

Councilor Jack Baker brought forward a Constitutional amendment recommendation for replacement of Council member due to removal, death, resignation or disability. The 1999 Constitution, Section VI, Section 13: reads in the case of removal, death, resignation or disability of any Council member, such seat shall be filled by the candidate having the next highest number of votes in that district, who is available and willing to serve and whose eligibility is confirmed by the Election Commission. He stated it goes on further to explain the process when no such candidate exists. He stated when the 1999 Constitution was written there was not a run-off election law for districts with two Council members. If there were numerous candidates from a district, the persons receiving the largest number of votes were elected to the Council. He stated the way the Constitution reads now if something were to happen to a current Council member their opponent would fill the seat. He recommended striking the language "such seat shall be filled by the candidate having the next highest number of votes in that district, who is available and willing to serve and whose eligibility is confirmed by the Election Commission. He stated it goes on further to explain the process when no such candidate exists." Councilor Bill John Baker voiced concern for the recommendation stating the Council may elect someone that the people of the district never would. Councilor Jack Baker made a motion to approve the recommendation. Councilor Garvin seconded the motion. Councilor Garvin stated the way it reads now would work if the candidates were of equal ability but it would be a poor choice if the candidates are extremely unequal. Councilor Anglen stated he has gone through this exact process and is in full support of this recommendation. He stated this was the exact process when he was elected the stated he was the next highest vote getter but had to come before the Council with two other candidates to be selected. He stated he has faith in the Council to

seat the right person. Councilor Hoskin Jr. inquired if this is a recommendation to go before full committee as a part of our reform of the election. Chair Frailey agreed. Councilor Jack Baker read the selection process as follows: If a majority of the four-year term remains to be served, the Council shall authorize a special election in the district of the vacated seat to be conducted within ninety days; if a minority of the four-year term remains to be served, the Council shall elect a replacement who would otherwise be qualified to serve from the district of the vacated seat. Councilor Coates gave support for the recommendation by stating it is more than a candidate putting out the effort or the abilities of the candidate but more the vision of what the people vote on. The people vote for a candidate for what they believe in or their vision. She stated if a candidate has already been defeated in a race and perhaps by a large margin it clearly indicates the people don't have the same vision. Councilor Glory-Jordan requested clarification that this is a constitutional amendment so if it passes this body it would be placed on a ballot. Chair Frailey agreed. Councilor Fishinghawk questioned changing the Constitution with what is going on in Washington. Mr. Hembree pointed out we are at the front end of an election process with an election not occurring for another three years. He stated if this is the will of the Council it would be introduced as a Resolution and placed on the next ballot. He stated he has been approached in regard to several constitutional amendments. He stated he doesn't foresee this as a controversial amendment. Councilor Fishinghawk requested Mr. Hembree research how often the United States Constitution gets amended. Mr. Hembree stated only 26 times in the last two hundred and some years. Councilor Glory-Jordan questioned the consideration of a special election in every case. Councilor Fishinghawk voiced concern for someone from a different district voting to replace someone from another district. The local people should be able to choose the person to represent them. Councilor Hoskin Jr. inquired if there is any other jurisdiction state or local that has this rule. Mr. Hembree stated he isn't aware of any but will research the issue.

Chair Frailey restated the motion is to approve this recommendation to be placed on the 2011 ballot. The motion carried with the following roll call vote:

Yea: 12 - Meredith Frailey; Jack D. Baker; Julia Coates; Janelle Fullbright; Curtis Snell; Buel Anglen; Harley Buzzard; Chuck Hoskin, Jr. ; Cara Cowan Watts; Bradley Cobb; Don Garvin and Chris Soap

Nay: 4 - S. Joe Crittenden; Bill John Baker; Jodie Fishinghawk and Tina Glory Jordan

DISCUSSION AND POSSIBLE ACTION OF AMENDMENTS TO THE ELECTION CODE

Mr. Hembree stated he has received numerous recommendations for change of the Election Law and has begun the task of incorporating them into the current law for review. He stated after the Council meeting tonight we will know if there will be a new representation by district. If the veto is overridden Chapter 1 Section 5A would be replaced, the last sentence of Section 5C would be deleted and all of Section 5D would be deleted.

He continued with a section by section review of LA-39-05 as follows:

Chapter 2 Section 11A.

He stated a holdover clause has been recommended which would state the Election Commissioner would remain in office until his or her successor is duly appointed and confirmed. The implementation of staggered terms for the Election Commission would begin in 2011. He recommended the Council appoint two Commissioners, the Principal Chief appoint two Commissioners and those four pick the fifth. Beginning in 2011 one appointee from the Council and one from the Principal Chief would initially

serve a 2 year term then thereafter serve 4 year terms to begin the staggering. The fifth appointee would either serve a 2 or 4 year term.

Where referenced the Judicial Appeals Tribunal would be changed to Cherokee Nation Supreme Court and Cherokee Nation prosecutor would be changed to Attorney General.

Chapter 2 Section 11 D7.

Mr. Hembree inquired if for the rules and regulations of the election need to be approved by the Council or just transmitted to the Council. Chair Frailey questioned if the Council should approve the rules of the Election Commission since they are an independent Commission. Mr. Hembree stated there are two schools of thought. One of those is they are an independent commission and are chosen for their intelligence and good judgment and the Council shouldn't tamper with what they have done. The other is the Council passes the laws of the Cherokee Nation and the rules by which the election is to be conducted is an interpretation of the statute the Council has passed therefore the Council should have approval. Councilor Hoskin Jr. suggested the Council approve the rules rather than just be reported.

Chapter 2 Section 11 E.

This pertains to conducting business in open meetings and the purposes for executive session. He stated this code was written prior to our FOIA Act. He recommended the wording be changed to basically state the Election Commission can go into executive session as allowed under the Freedom of Information Act. This would provide a consistency with all commissions and bodies.

Chair Frailey clarified we are just in discussion at this time section by section. Mr. Hembree stated his idea is to go section by section and put forth all recommendations then insert them into one Act for Rules Committee to consider.

Chapter 2 Section 12.

No changes recommended

Chapter 2 Section 13.

Mr. Hembree stated his opinion is that all oaths should be uniform as to the Constitutional oath within the Constitution.

Chapter 2 Section 14.

No changes recommended.

Chapter 3 Section 21 A.

Mr. Hembree stated he has prepared an amendment which would add #4 to this section. It would state if you have pled guilty to a felony or have a felony conviction without a pardon you are ineligible to vote. Councilor Glory-Jordan inquired if this was a problem in the last election. Mr. Hembree stated he has brought forward all recommendations. This recommendation originated in the AG's office and has been spoken by a few Councilors. Councilor Glory-Jordan inquired as to how tracking would be kept. Mr. Hembree stated you are not allowed to vote in the State of Oklahoma if you are a convicted felon. Councilor Glory-Jordan questioned the validity of an election if a few convicted felons slip through and vote. She stated they

are still taxpayers and have paid their debt to society. Councilor Hoskin Jr. voiced concern for this recommendation and agreed with Councilor Glory-Jordan. Councilor FISHINGHAWK requested confirmation but thought the felons could vote in the State of Oklahoma once their sentence is fulfilled. Mr. Hembree stated he would research not only the State of Oklahoma's rules in regard to felon's voting as well as how they are policed. Councilor Bill John Baker voiced concern for the staffing issues to determine if an already registered voter is a convicted felon or not. Councilor Cowan Watts inquired if this committee takes no action then the idea of this recommendation dies. Mr. Hembree stated he will do the research requested then the committee can determine from there the direction to take.

Chapter 3 Section 21 B.

Mr. Hembree stated the word may needs to be added.

Chapter 3 Section 21 C 1.

Mr. Hembree stated provided that the veto is overridden tonight this would need to be changed to the singular tense instead of plural.

Chapter 3 Section 21 C 2.

Non resident voters would need to be changed to "At Large" registered voters. Councilor Coates suggested it be removed completely due to the Constitution already stating what the At Large voters are required to do. Mr. Hembree stated that was his next suggestion. Councilor Jack Baker agreed.

Chapter 3 Section 21 C 4.

Mr. Hembree suggested "or candidates" would need to be deleted. He questioned the need for "non resident registered voter" to remain. Councilor Bill John Baker stated in this initial election the voters would be notified of their district. Mr. Hembree stated in the future if a move is from one district to another you would have to reregister. He questioned having At Large voters included in the provision due to their status not being able to change from an At Large voter. Councilor Bill John Baker questioned if moving from At Large to within jurisdiction if they could reregister to vote within the district they have moved to. Mr. Hembree suggested leaving in the "non-resident registered" for now.

ANNOUNCEMENTS

ADJOURNMENT

Councilor Glory-Jordan moved to adjourn and begin at the next meeting with Chapter 3 Section 22. Councilor Bill John Baker seconded the motion. Motion carried at 4:00 p.m.

COUNCIL MEMBERS PRESENT BUT NOT SERVING:

David Thornton

STAFF PRESENT:

Nason Morton

Tom Elkins

VISITORS PRESENT:

Robert Girty

Jim Ketcher

APPROVAL / DISTRIBUTION

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: _____

Minutes attested and concurred by: _____

Date: _____