

Repealed LA#280

An Act

LEGISLATIVE ACT 28-99

AN AMENDING LEGISLATIVE ACT 8-97 AND CHEROKEE NATION CODE TITLE 19, CHAPTER 3, SECTION 21 ENTITLED "COMPENSATION OF COUNCIL MEMBERS -- GENERALLY; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

CHEROKEE NATION CODE, TITLE 19, CHAPTER 3, SECTION 21 ENTITLED COMPENSATION OF THE COUNCIL MEMBERS --- GENERALLY, IS HEREBY AMENDED TO READ AS FOLLOWS:

There is hereby created a Special Class of Employees that shall be known as "Elected Legislative Officials of Cherokee Nation". Council Members shall receive compensation for conducting the official duties of their office. Council Members shall receive \$23,800.00 per annum plus a meeting allowance of \$4,800.00 per annum.

Council Members shall be eligible to participate in the following fringe benefits:

- (1) Dependent Health Insurance
- (2) Dental Insurance
- (3) Family Dental Insurance

Council Members shall be provided the following fringe benefits:

- (1) Health Insurance
- (2) Long Term Disability insurance
- (3) Workers Compensation Insurance
- (4) Life and Accidental Death and Dismemberment Insurance

Required state and federal taxes customarily paid by the Cherokee Nation for its employees shall also be paid for Council Members. The effective date of such shall commence on April 1, 2000, and continue thereafter for the duration of the term of effective office, unless amended.

Council Members shall be subject to policies and procedures as adopted by the Tribal Council from time to time and shall not be subject to human Resource Policies adopted by the Executive Branch of the Cherokee Nation.

Passed by the Cherokee Nation Tribal Council on the 13th day of December, 1999.

Hastings Shade, President
Cherokee Nation Tribal Council

ATTEST:

Stephanie Wickliffe
Stephanie Wickliffe, Secretary
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 13th day of December, 1999.

Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:

Jim Parris, Secretary-Treasurer
Cherokee Nation

YEAS AND NAYS:

Mary Flute-Cooksey	<u>Yea</u>	Don Crittenden *	<u>Yea</u>
Harold DeMoss	<u>Yea</u>	Don Garvin	<u>Nay</u>
Charles Hoskin	<u>Nay</u>	John F. Keener	<u>Yea</u>
John A. Ketcher	<u>Yea</u>	Nick Lay	<u>Yea</u>
Jackie Bob Martin	<u>Nay</u>	Dorothy Jean McIntosh	<u>Yea</u>
Harold Phillips	<u>Nay</u>	Barbara Starr-Scott	<u>Yea</u>
Melvina Shotpouch	<u>Yea</u>	David Thornton, Sr.	<u>Yea</u>
Stephanie Wickliffe	<u>Nay</u>		

This legislative act #28-99 was returned on December 17th, 1999 without endorsement from Principal Chief Smith, Deputy Chief Shade and Jim Parris, Secretary-Treasurer. Principal Chief attached a memorandum stating his position on the compensation for council members. (See attached) There was no indication of vetoing, therefore the legislation became law after five days.

Gina Blackfox 12/17/99
Gina Blackfox, Legislative Aide

28-99

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**CHEROKEE NATION
OFFICE OF PRINCIPAL CHIEF**

TO: Tribal Council Members
FROM: Chad Smith, Principal Chief
DATE: 12/17/99
RE: Legislation

Please be advised that I am not endorsing Legislative Act 99-____, An Amending Legislative Act 8-97 and Cherokee Nation Code Title 19, Chapter 3, Section 21 Entitled "Compensation of Council Members" -- Generally:" and Declaring an Emergency.

Legislative Act 99-____ provides for additional compensation and benefits for the Council and, in fact, evidences a dramatic public policy change in the character and function of the Council. Legislative Act 99-____ indicates that members of the Council are no longer citizen volunteers but full time professionals. This public policy change is evidenced by the subject legislation providing for employment benefits including: 1) Health Insurance, 2) Long Term Disability Insurance, 3) Workers Compensation Insurance; and 4) Life and Accidental Death and Dismemberment Insurance. It is this public policy change and especially the process in adopting such a dramatic policy that I am most concerned. Below are reasons that I cannot endorse the Council passing additional compensation only months after taking office.

Public Policy

The better public policy is to communicate clearly to the Cherokee public, our constituents, and advise them of the issues surrounding the additional compensation issue. There appears to have been insufficient community notice and briefing on the issue. My observation is that the overwhelming majority of Cherokee people are adverse to increased compensation at this time. This negative public response indicates inadequate communication and education regarding the issues.

A better course of action, suggested by a member of Council, is to establish a compensation commission to review council compensation and to make recommendations. This is the well-accepted practice by the federal and state government. I am disappointed in the process of adopting a full time professional policy when the overwhelming Cherokee public is adverse to the policy.

Constitutional Issues

The legislation, as written, has serious constitutional infirmities. The legislation states, "a new class of employees is created." While it appears this language is intended to qualify council members for various insurance policy coverage, it is in conflict with the Constitution. Council members are not employees. The Cherokee Nation's insurance policy can be rebid to provide for councilpersons without the creation of a special class of employees. This constitutional conflict is apparent in Article XII where it provides for dismissal of employees only "for cause" status after 1 year service.

The legislation as written creates a serious conflict. This conflict is evidenced by a recent unemployment compensation claim by Dora Mae Watie on grounds that she is no longer "employed" with the Cherokee Nation. The present legislation creates numerous problems including separation of powers. This constitutional problem invites litigation by citizens.

Budget

It would be a more prudent course of action to resolve the budgetary items remaining from the last administration and council before enacting additional compensation for the Council. As you are clearly aware, there is at least a 4 million liability left over from the previous administration and council that has no appropriation. Furthermore, the Department of Interior policy change regarding indirect costs as applied to tribal council salaries and expenses has not been addressed.

Unanswered Questions

The Legislation does not address the current status of Councilpersons who are employed full time. There are no provisions to establish the functions of Council and reconcile those situations where certain Councilpersons cannot or do not perform minimum levels of attendance and activities suggested by the Legislation.

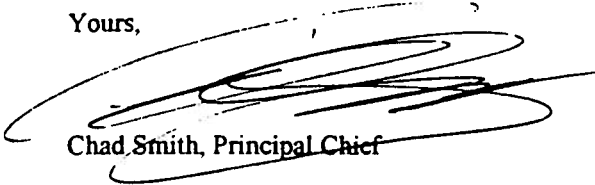
Proxy Unconstitutional

The President of the Council advised prior to the voting on the Legislation that proxy votes were not in compliance with the Cherokee Nation Constitution. Article V Section 11 provides that Councilpersons must be present to cast votes. (Actually, the requirement is that any enactment be by a majority of those in attendance. Thus, a proxy vote would either be superfluous or invalid.) Since the Council, as a body, overruled the Chair and endorsed proxy voting in violation of the Constitution, it appears the vote is invalid.

Consultation

Although I acknowledge and support the independence of the Council, it is better public policy for us to cooperatively address these issues. Consultation may avoid many pitfalls such as those that will undoubtedly occur with the legislation deeming Councilpersons to be employees. I hope we can reconcile this issue.

Yours,



Chad Smith, Principal Chief