

**RULES COMMITTEE
LEGISLATIVE CONFERENCE ROOM
March 27, 2008
1:08 P.M.**

STANDING COMMITTEE: Rules Committee

COMMITTEE PRESIDED BY: Meredith Frailey, Chair

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Joe Crittenden

STAFF PRESENT:

Melanie Knight	Nason Morton	Tom Elkins
Doug Evans	Anna Knight	Angela Drewes
David Justice	Chief Chad Smith	Sharon Swepston
Ashlie Ashmore	Vickie Hanvey	Sharon Wright
Becky Johnson	Diane Hammons	Will Chavez
Jamie Hummingbird	Todd Enlow	Gregg Simmons

VISITORS:

Raymond Vann	Charles Dry	Todd Hembree
Gina Olaya	Emily Bushyhead	Brad Carson
Joe Lane	Mike Miller	Jim Carrington
Fredia Vann	Pam Bickford	Lee Levinson

QUORUM ESTABLISHED: Yes

LEGISLATION: Yes

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CALL TO ORDER:

Chair Frailey called the meeting to order at 1:08 p.m. Councilor Garvin gave the invocation. Roll was called and a quorum was established.

APPROVAL OF MINUTES:

Councilor Jack Baker moved for the approval of February 28, 2008 regular session minutes and the March 10, 2008 sub committee minutes. Councilor Cobb seconded the motion. Motion carried.

REPORTS:

Marshal Service:

Ms. Sharon Wright provided a written report. Councilor Hoskin Jr. inquired if the resources were available to do animal control as had been requested. Ms. Wright stated they do not have the man power, the facilities, or the equipment to transport or catch. She voiced additional concerns regarding cost of veterinarian bills if needed. Councilor Hoskin Jr. requested she research and provide information including numbers for these concerns by the next meeting. Councilor Cobb inquired about the status of cross deputizing in Ramona. Ms. Wright stated they have signed the paperwork and have asked for a press release. They have not been contacted regarding the press release at this time. Ms. Wright stated they are in the process of doing the same for Muldrow. Councilor Buzzard inquired about the 3 general policing areas. Ms. Wright stated it is a part of their 5 year plan to open area sub stations. They have generalized 3 areas and will have a commander in each area as well as an office.

Justice Department:

Attorney

General Diane Hammons apologized for not submitting a written report. She stated they remain busy with all 3 ICI lawsuits. They are in jury term now. Last week they received news of the tobacco arbitration panel's decision. The decision was released from the confidentially order this morning. The good news is our questions are answered however the bad news is the answer is no and is worse than anticipated. The panel felt the Stated did not breach the compact by repealing their sales tax. The Nation in coordination with the retailers did breach the compact by allowing retail to retail sales to take place. The arbitration panel also held that Oklahoma Tax Commission Rule 12 was valid and was not a violation of the compact but that Rule 13 was valid and joined the State of Oklahoma in ever trying to enforce Rule 13. Ms. Hammons stated this means that retail to retail sales is volatile of the compact. The compact is in effect right now and will remain in effect either until its expiration, the parties mutually agree to rescind, or enter into a new compact. We are bound by the terms of the compact to enforce it therefore the

Tax Commission will be sending notification to all of our retail licensees about the order and the effects. She stated the right of appeal wasn't provided in the compact. She stated we have a duty under to compact to enforce its terms. The State can impose sanctions and or restrictions on wholesalers. They will have the most impact on the wholesalers. The arbitrators have made it very clear that the Favored Nation's Clause only applies to compacts entered into after February 9, 2004. There is a limit to what the State can do on Indian Country they can regulate the number of wholesalers coming in. Councilor Hoskin Jr. inquired as to the gag order time line. Ms. Hammons stated it was her request the order be lifted this morning. She stated she couldn't logistically determine a way to inform this Council, the Tax Commission and the retailers. Councilor Hoskin Jr. inquired as to when the damages would be determined. Ms. Hammons stated there will be another hearing to determine damages but has not been set at this time. Councilor Soap inquired as to the extent of enforcement the Tax Commission would have. Ms. Hammons stated The Tax Commission is sending out notification today to all of the licensees directing that retail to retail sales cease. Improperly stamped cigarettes are contraband and can be ceased by the Commission. The Commission has the ability to cease, impose fines, suspend or revoke licenses. Councilor Glory-Jordan requested why an extension wasn't explored in our compact. Councilor Thornton inquired if there are Nation's without a compact that refused to enter. Ms. Sharon Swepston stated there are but she doesn't have a complete list. She stated the Creek Nation doesn't have a compact. She stated the Most Favored Nation's Clause Compacts they have reviewed are not newly entered into they are either being renewed or are being held at that rate due to litigation. Councilor FISHINGHAWK inquired if the tax code addressed store to store sales. Ms. Swepston stated it doesn't address retail to retail sales in the rules and regulations but it does in a Legislative Act. Mr. Todd Hembree stated in 2005 or 2006 there was a Legislative Act established to allow retail to retail sales prior to this date it was not allowed. This Act also allowed the Tax Commission to collect a sur tax of \$1.50. Councilor FISHINGHAWK requested clarification. Ms. Hammons announced we also have an Act that ratifies this compact which agrees to the terms of the compact. We had a dispute as to what these terms meant and a panel in which we agreed to have told us what those terms meant therefore we are bound. This is not the State telling us, we agreed to be bound by the compact itself this body and the Principal Chief in contracting with the State. Councilor Cobb stated he has been approached by numerous people with the same problem. He provided the example of a couple in divorce proceedings with the mother being Native American requests the father maintain health insurance on the minor children and the other attorney asked why they would need health care insurance being Native American when you can go to the clinics or IHS facility. Ms. Hammons stated she would research the issue and report back. Councilor Thornton inquired if Ms. Hammons had ever written an opinion regarding the 1866 and or 1868 treaties involving payment of state taxes. Ms. Hammons stated she would provide a copy of their brief where they argued this with the State. She announced they lost the argument inquiring if the Cherokee Nation was liable to the State for any taxes on manufactured products coming out of Indian Country. Mr. Lee Levinson announced he hasn't read the arbitrators decision. He stated it is hard to comprehend how an arbitration panel can rule that waiving sales tax doesn't violate the compact. He stated we are in a situation where the Cherokee Nation didn't create the problem; you can't have 7 different tax rates in the same geographic area. He stated recently the State raised the rates on the Otoe Missouri's and the Kaw's and didn't terminate the compact. The State sent a letter out raising their rate to the non compact rate. The tribe sued stating the rate was 25% that they had not terminated the compact in time and went into the extended term. The State immediately rolled the rate back to the 25%. If those 2 compacts were extended the only thing we have going in our favor is that

we need to invoke the favored nation's clause that these compacts are in their extended term. Mr. Levinson questioned why if the Cherokee Nation pays the State taxes how can the State mandate what the Cherokee Nation charges the Cherokee retailers for their tax. This is not a tax issue it is a competitive issue in order for certain retailers in the Tulsa area to not allow us to stay in business. He stated a District Court Judge agreed we complied with the compact due to the way it is written. It states taxes collected at first incidence when it is sold for resale in Indian Country.

Election Commission:

Chair Frailey announced a written report has been provided in the packet. No one was present to report.

Tax Commission:

Ms. Sharon Swepston announced written reports were submitted and offered to answer any questions. Councilor Fishinghawk inquired about the status of her request from last month for a breakdown of the drop in tobacco sales by percentage and location once the new rate came into effect as well as the affect of our sales revenue per carton. Ms. Swepston stated they are still in the process of compiling the information. Councilor Glory-Jordan inquired if they have considered the flexible hours. Ms. Swepston stated she discussed the idea with the Board and they don't have an issue. She is now in the process of speaking to the managers to determine if there is staff available to change their hours to accommodate.

Self-Governance:

Ms. Vickie Hanvey provided a written report. She updated all of the MOU's and funding agreements have all gone to the DOI for processing. She announced the Office of Special Trustee came in last week and has completed their review with good comments regarding the Real Estate Services department. They further commented that as large as the departments are they work very well together. The DOI has cancelled the meeting scheduled on the 8th of April regarding the Title IV amendments.

Gaming Commission:

Mr. Jamie Hummingbird announced his report is in the packet. He reported proposed Senate Bill 2676 introduced by Senator Bidder from Louisiana "The Common Sense Indian Gambling Reform Act of 2008." He stated Senator Bidder is trying to amend the Indian Gaming Regulatory Act by allowing the NIGC to expand it's authorities and scope into the class III gaming arena. This would allow them to assert their jurisdictional oversight. He stated this isn't the only provision but the one of most concern. He stated he would continue to watch the progress. He announced House Bill 5608 introduced by Congressman Ray Hall this draft bill is cited as "The Consultation and Coordination of Indian Tribal Governments Act." He stated the overall intent of this proposal is for a consultation policy to be developed that would be applicable to all Federal agencies that will get them into compliance with the presidential executive order regarding consultation for tribes. Councilor Bill John Baker inquired as to the effect on us if the bill passed to regulate class III gaming. Mr. Hummingbird stated it would put us in the position of having to work with not only NIGC but with the State. The State would

more than likely analyze our current compact section by section and look for areas that are not up to their level of expectations as far as performance.

GEG Investigation report:

Ms. Diane Hammons announced there has been significant action within the last month and the federal investigation is still ongoing.

Codification:

Mr. Todd Hembree invited any interested parties to attend the codification meeting set for tomorrow morning at 1:30 p.m. here at the Council House. He stated they plan on completing the assignment of Legislative Act to titles and then begin dividing up the title to review line by line.

OD BUSINESS:

1. **Presentation of Recommendations of the Elected Officials Compensation Committee.** Councilor Garvin made a motion to table this item to the April Rules meeting. Councilor Cowan Watts seconded the motion. Motion carried.
2. **An Act Relating to the Amendment of Title 19 Officers and Meetings; Adding Division of Question; and Declaring an Emergency.** Councilor Jack Baker made a motion to table this item to the April Rules meeting. Councilor Anglen seconded the motion. Motion carried.

NEW BUSINESS:

1. **A Resolution Confirming the Nomination of Pamela Bickford as a Board Member of the Economic Development Trust Authority Board of Directors.** Councilor Cowan Watts made a motion for approval. Councilor Anglen seconded the motion. Motion carried.
2. **A Resolution Confirming the Nomination of Fredia Vann as a Board Member of the Cherokee Nation Community Association Corporation Board of Directors.** Councilor Jack Baker made a motion for approval. Councilor Bill John Baker seconded the motion. Motion carried.
3. **A Resolution Confirming the Nomination of Patsy Edgar as a Board Member of the Cherokee Nation Community Association Corporation Board of Directors.** Councilor Cowan Watts made a motion for approval. Councilor Anglen seconded the motion. Motion carried.
4. **A Resolution Confirming the Nomination of Jim Ketcher as a Board Member of the Cherokee Nation Community Association Corporation Board of Directors.** Councilor Garvin made a motion for approval. Councilor Cowan Watts seconded the motion. Motion carried.
5. **A Legislative Act Amending LA#31-04; Amending Title 63 Chapter 3, Article 2 § 101 of the Cherokee Nation Code Annotated, the Environmental Quality Code; and Declaring an Emergency.** Councilor

Cowan Watts made a motion for approval. Councilor Jack Baker seconded the motion. Motion carried.

Councilor Cowan Watts made a motion to amend the agenda to include an item concerning real estate in the City of Collinsville. Councilor Anglen seconded the motion. Chair Frailey inquired as to the regard to this item. Councilor Anglen stated the City of Tulsa deeded this property to the Cherokee Nation for a Community Building for a cemetery. This request is to annex the property to the City of Collinsville for inspections, water and sewer. Chair Frailey inquired if legislation would be needed. Mr. Hembree stated it would be appropriate for a Resolution in support to be prepared to allow the annexation of property in fee simple. Mr. Anglen stated this is a time sensitive issue to continue with the cemetery work. Councilor Crittenden requested a friendly amendment to include discussion of the Most Favored Nation's Clause. Councilor's Cowan Watts and Anglen accepted. Motion carried to amend the agenda. Councilor Hoskin Jr. requested clarification in regard procedure and the waiver of time for agenda items. Chair Frailey stated generally there is a ten day notice and don't like to do this at the last minute but there are times when issues arise that are time sensitive.

6. Discussion and Possible Action of a Redistricting Map VIA Rules Sub Committee. Councilor Fishinghawk stated she has been meeting with Mr. David Justice and feel they have developed a more accurate map. Councilor Fishinghawk made a motion to move this discussion back to the Rules Sub Committee to allow discussion. Councilor Fullbright seconded the motion. Councilor Cowan Watts stated she does not support this that she and Councilor Garvin have been very patient in trying to move toward some kind of resolution. Councilor Garvin voiced concern for the continued delays as well. Councilor Hoskin Jr. stated one person's delay is another person's careful deliberation. He stated Councilor Fishinghawk has brought to light some different numbers on the population and time needs to be taken to consider them. Councilor Fishinghawk inquired as to an appropriate time line. Mr. Hembree stated we are 3 years to the next election and this won't be a fast process it needs to keep moving. Mr. Enlow announced he had a report of how the numbers are derived that he would email to everyone. He stated they have attempted to geo code by citizen residences and can in 7 of the 14 counties. He stated Mr. Justice has contact the State Election Commission to determine how they derive their data. He stated they use geo coding by a mathematical analysis. Mr. Justice tried this with our data and had less than 50% success ratio which is approximately where they were with geo coding. Councilor Glory-Jordan called for the question. Roll call is as follows:

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

The motion to send back to the Rules Sub Committee carried with fifteen (15) yeas and two (2) nays.

7. **A Resolution Consenting to the Annexation of Cherokee Nation Property to the Boundaries of the City of Collinsville.** Councilor Bill John Baker moved for the approval. Councilor Crittenden seconded the motion. Motion carried.

8. **Most Favored Nation's Clause.** Councilor Crittenden stated it is his understanding that without this clause a lot of the smoke shops will have to close. Ms. Hammons stated they are in the process of exploring the options of this clause. Mr. Joe Lane stated this is an emergency because as of tomorrow they will not be able to get anymore cigarettes. Starting tomorrow to purchase they would have to pay \$8.60, all of the wholesalers have been cut off which is 40% of their business. He stated he is buying Marlboro at \$33.40 and selling at \$34.00 a carton which is 50 cents under Quick Trip. He stated he is making 60 cents a carton on 40% of his business. If the Council doesn't provide some type of relief he will be broke and turn in the keys. He begged the Council to invoke the Favored Nation's status concerning the Modoc's or the Kaw's. Councilor Glory-Jordan inquired how much the arbitration ruling is affecting them by carton. Mr. Lane stated they went from making \$3.00 per carton to 60 cents a carton. Councilor Glory-Jordan inquired how much the Cherokee Nation makes per carton. Mr. Lane stated the Nation is making \$2.00 per carton. Ms. Swepston stated \$1.50 of this is the sur tax that will cease with no more retail to retail sales. Councilor Glory-Jordan stated we can't invoke the Most Favored Nation's Clause until it goes through litigation so that leaves this body with considering to lower the tax temporary to help keep them open. Councilor Cowan Watts inquired as to what tax is being referred to. Councilor Glory-Jordan stated she sees an industry that is providing 356 jobs for countless families. She stated we need to do what we can to temporarily keep the doors of these shops open. Councilor Cowan Watts requested Councilor Glory-Jordan make a motion to allow us to move forward. Councilor Glory-Jordan made a motion to forego the current tax that we receive from the smoke shops and the rebate from the State. Chair Frailey called point of order. Mr. Hembree stated the agenda was amended to either invoke or not invoke the Most Favored Nation's Clause. He recommended the committee vote to have a resolution to invoke or not invoke the clause. He suggested amending the agenda at Executive and Finance to continue the current discussion to allow time to number crunch. Councilor Cowan Watts made a motion to send to full council from this committee a resolution in support of the Most Favored Nation Clause. Councilor Bill John Baker seconded the motion. Motion carried.

ANNOUNCEMENTS:

ADJOURNMENT:

Councilor Cobb moved for adjournment. Councilor Anglen seconded the motion. Motion carried.

APPROVAL / DISTRIBUTION:

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: Cara Cavan Watts

Minutes attested and concurred by: [Signature]

Date: 4/24/08