



# Council of the Cherokee Nation

## Meeting Minutes Rules Committee

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Thursday, February 5, 2009

1:00 PM

Legislative Conference Room

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### CALL TO ORDER

Chair Frailey called the meeting to order at 1:12 p.m.

### INVOCATION

Councilor Bill John Baker gave the invocation.

### ROLL CALL

**Present** 14 - Bill John Baker; David Thornton Sr. ; Don Garvin; Meredith Frailey; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Tina Glory Jordan; Jodie Fishinghawk; Harley Buzzard; Chris Soap; Bradley Cobb; Chuck Hoskin, Jr. and Julia Coates

**Late Arrival** 3 - S. Joe Crittenden; Janelle Fullbright and Curtis Snell

### APPROVAL OF MINUTES

Councilor Jack Baker made a motion to approve the December 16, 2008 regular session minutes. Councilor Garvin seconded the motion. Motion carried.

Councilor Buzzard made a motion to amend the agenda to include a resolution pertaining to a waiver of sovereign immunity as it applies to a nursing home in Jay, Oklahoma. Councilor Cowan Watts seconded the motion. Motion carried.

### REPORTS:

1. Marshal Service - Sharon Wright

Chair Frailey announced Ms. Wright is ill and unable to present. Her written report has been provided.

2. Justice Department - Diane Hammons

Ms. Hammons offered to answer questions from the report she submitted. She announced they had filed in the northern district of Oklahoma a federal lawsuit on the freedman issue. The filing of the federal case should not undermine the tribal court case. All the briefs are in for summary judgment on the tribal court case. The filing of the federal case represents the fulfillment of our promise to certain congressional leaders that we would put the issue with the federal courts on the dispositive issue of what is the treaty of 1866. The case doesn't address any tribal rights to citizenship it centers around federal rights if there is one. The Cherokee Nation is no longer a party in the District of Columbia case. She announced the Cossey decision from the Oklahoma Supreme Court came out regarding a tort claim against CNE involving a fall at one of the casinos. She stated the decision is bad. The decision indicates that no majority of the court to arrive on a decision or a theory about the law of the case.

They will be seeking re hearing on the decision. She stated the crucial issue is who has jurisdiction to decide these tort claims that occur at the casinos. The court found the State courts of Oklahoma supports competent jurisdiction. This is not what the tribes intended. The Governor and the Treasurer executed affidavit to the extent that this is not what they understood either. The Supreme court didn't accept the affidavit. She stated this is probably the beginning attitude of the court to chip away at tribal sovereignty. Councilor Hoskin Jr. inquired if it would be possible to compact out of the situation. She stated it is possible. She talked about the possibility of an addendum to the compact reflecting what a court of competent jurisdiction means. Councilor Hoskin Jr. inquired if outside counsel was being used for the northern district case. Ms. Hammons replied both outside and in house counsel. Councilor Hoskin Jr. inquired if at this point in the fiscal year if she is where she thought she would be with the budget for outside counsel. She stated she believed so that the Washington DC invoices have dropped dramatically. Councilor Hoskin Jr. inquired if the district court case would rule before the northern district rules. She stated the Cherokee Nation district court case decision will go up to the Cherokee Nation supreme court. Councilor Glory-Jordan requested an update on the poultry case. Ms. Hammons stated the poultry industry filed a motion to dismiss against the State of Oklahoma alleging that the Cherokee Nation is an indispensable party because we own the water rights to the Illinois River Watershed within our jurisdiction. The State of Oklahoma has responded which did acknowledge we did have some claim to the water. The poultry industry has filed a reply to the response. The Cherokee Nation has not filed anything in the suit. A brief is being prepared in house but are not certain if it will be filed as an intervention, as an Amicus brief or as a motion to dismiss. She stated at this time they have chosen not to enter into this case knowing how complex the litigation would be. Mr. Todd Hembree stated when he discovered the Cossey decision he made sure that the Council was notified. He stressed the importance of the decision and encouraged the Council to review it as to tribal sovereignty in Indian country. He stated the first he learned about the decision was in the bar journal. This is a case of major importance to the government of the Cherokee Nation and didn't receive any reports until the decision was made. He stated he would hope if there are other cases like this one that we would receive a report on the litigation ahead of time. Ms. Hammons stated a law firm in Rogers County handled the lawsuit and they did keep her apprised of it. She stated over the last few months their interaction with the entities pertaining to legal cases has become much more frequent. Councilor Buzzard voiced concern for CNE not communicating this issue to the Council. Councilor Glory-Jordan stated as the single share holder of the entities they have a duty when they report to this Council each month to apprise us of what pending law suits they have. Mr. Hembree stated it would be appropriate for the entities to give litigation updates in Executive and Finance Committee.

3. Election Commission -

Chair Frailey stated the Election Commission had submitted a written report.

4. Tax Commission - Sharon Swebston

Ms. Swebston offered to answer questions from the written report she submitted.

5. Self-Governance - Vickie Hanvey

Ms. Hanvey provided an update in contract support costs she had reported the negotiation was complete and has been included in the 2008 shortfall report for IHS and Hastings will become part of the shortfall in 2009. In total they added an additional \$10,394,000 in contract support costs shortfall. She stated this puts the

*Cherokee Nation in a better position should more funds be appropriated for contract support. Councilor Cobb inquired if there has been any favorable responses on the roads funding formula in Washington DC. Ms. Harvey stated we have been the Washington office and the Roads Department to address the issue.*

6. Gaming Commission - Jamie Hummingbird

*Ms. Debra Wilson offered to take questions back to Jamie Hummingbird for answers.*

7. Codification - Todd Hembree

*Mr. Hembree announced they are finished with volume 1 and half complete with volume 2. They plan to meet on Monday and is progressing well. He stated the Justices have been very proficient in getting the court rules over to us. He stated there aren't any major changes. He commended Chief Justice Matlock on his work.*

8. GEG Investigation Report - Diane Hammons

*Ms. Hammons stated there is nothing new to report.*

9. Cherokee Nation Education Corporation - Margaret Raymond

*Ms. Shelley Butler-Allen the Secretary Treasurer offered to answer questions from the quarterly report she had submitted. Chair Frailey inquired if it would be more appropriate to report to the Education Committee. Councilor Glory-Jordan announced she had attended the CNEC annual meeting and their boards specific preference is for the report to be before the Rules Committee. Ms. Butler-Allen announced they have newly elected officers. The new President is Kimberly Gilliland. The scholarship applications are on the website. She provided each council member with eight applications. March 20th is the scholarship submittal deadline. Councilor Garvin inquired if all of these scholarships listed on the back of the application were also for outside of the Cherokee Nation jurisdiction. Ms. Butler-Allen responded the scholarships that are available outside the jurisdictional boundaries are the "At Large" Tribal Council Award, the John Shurr Journalism Award, CNEC Mission Award and the Nell D. Brown Memorial Award. Councilor Hoskin Jr. suggested future applications have in bold print that The Cherokee Nation Education Corporation is a different entity than Cherokee Nation Higher Education and each provide different scholarships.*

## OLD BUSINESS

1. MORTGAGE FORECLOSURES (Discussion Only)

*Councilor Glory-Jordan announced it had been requested that the date of the sheriff sale be included on the foreclosure report. Ms. Shay Smith announced the Commerce Department is working with the Attorney General's office to prepare a more comprehensive foreclosure report. She stated the new report will include the foreclosure date, the appraised value of the property, amount of first mortgage, amount of the second mortgage and types of housing services the structure received. She stated the spreadsheet should be complete by the end of next week. Councilor Glory-Jordan requested the location of the home also be included. She stated the hope is to re-purchase the homes to place in our inventory to help our families. They requested a physical address for the properties and possibly driving directions. Ms. Smith suggested instead of including all addresses each month to only provide the information for those coming up for foreclosure within the next month or two.*

Councilor Buzzard inquired if some of the properties had already been sold. Ms. DeNita Cox from the Attorney General's office stated Crawford, Goss, Ross, Gladd, Harris and Smith have already been sold. She gave the following sheriff sale dates: Choate 2-12-09, Davis 2-17-09, Soap 2-25-09, Tanner 2-17-09, and V. Mason 3-23-09. Councilor Bill John Baker questioned the rehab listed on the foreclosure list. Ms. Cox stated they may have taken out a second mortgage after the rehab was complete. Ms. Smith stated it may be a deed restriction as part of the useful life for NAHASDA for a certain amount of time.

2.

## CONSTITUTIONAL AMENDMENTS COVERING TERM LIMITS (Discussion only)

**Sponsors:** Councilor Cara Cowan Watts, Councilor Buel Anglen, Councilor Janelle Fullbright and Councilor Julia Coates

Councilor Cowan Watts announced Councilor Coates had requested by email to be included as a sponsor on this item.

**Councilor Cowan Watts made a motion to amend the agenda to take action on this item today. Councilor Anglen seconded the motion. Motion carried with Councilor Bill John Baker opposed.**

## CONSTITUTIONAL AMENDMENTS COVERING TERM LIMITS (Discussion only)

**Sponsors:** Councilor Cara Cowan Watts, Councilor Buel Anglen, Councilor Janelle Fullbright and Councilor Julia Coates

Councilor Cowan Watts stated Mr. Hembree is prepared to split the language to have two questions on the regular election in 2011 so there is no additional cost to the Cherokee people. She made a motion to have two questions on the ballot would be term limits for the Legislative Branch and term limits for the Executive Branch. Councilor Anglen seconded the motion.

Councilor Jack Baker questioned if there should be a third item to provide the At Large voters another opportunity to re-register. Councilor Cowan Watts stated she would accept as a friendly amendment for there to be 3 questions on the ballot of the 2011 general election.

Councilor Glory-Jordan requested confirmation that any of these items would be coming to a vote of the people prior to the 2011 general election. Councilor Cowan Watts stated she doesn't feel it would be necessary and that it would be appropriate in the 2011 regular election that it can be answered. She stated the people would be able to vote yes or no on 3 different questions; term limits for the Legislative Branch, term limits for the Executive Branch, and the opportunity for another one time decision to vote At Large or not. If the vote of either of these 3 questions in 2011 creates a change in current law it would affect the next election following 2011. Councilor Hoskin inquired if this would be one resolution with the three questions. Councilor Cowan Watts agreed it would be one resolution. Councilor Hoskin Jr. inquired if the term limit portion passes in 2011 how would it effect current council members if re-elected. Mr. Hembree suggested a resolve clause should be added that ballot measures shall be conducted on the general election of 2011. In regard to Councilor Hoskin's question he responded if the term limit questions pass in 2011 once the election is certified it is no longer part of the constitution. Councilor Hoskin Jr. stated he is in favor of three separate resolutions for these ballot questions. Councilor Cobb requested clarification on the third component regarding at large voting. Mr. Hembree stated if this passes in 2011 one word would be changed in what is the current constitution. The current wording is "at the first election to fill At Large seats" and would need to be changed to "at the time of the 2013 election to fill At Large seats". Councilor Cobb stated before one of the big problems was it was

done too quickly. Mr. Hembree stated this would be a question for the Council to discuss with the Election Commission. Councilor Cowan Watts stated it is her understanding that currently there are term limits. We do not know what the Courts decision will be regarding those already serving two terms. If the Courts should decide we have been under term limits since her first election then she would not be eligible for the 2011 election. She stated the people have the right to determine this separately where before it was an all or nothing decision. She stated if this body strongly feels this should be three separate resolutions to make it clearer then she would entertain a motion to do so. Councilor Thornton requested clarification that if the court should decide some members of this Council are in their second term and can not run again then they could not file to run in the 2011 election. Mr. Hembree agreed it that is the way the Supreme Court ruled Councilor Thornton is correct. Councilor Bill John Baker made a friendly amendment to divide these three questions separately. Councilor Cowan Watts and Anglen accepted the friendly amendment.

Councilor Jack Baker questioned in regard to the At Large voting if the wording should read previous to the implementation of the new constitution. Mr. Hembree stated he would get with Ms. Hammons on wording and have it ready for Full Council. Councilor Bill John Baker stated they will vote At Large in the 2011 election and if we open it up again for the opportunity to change he questioned if we really want to cause this confusion and keep the election process in turmoil. He stated they were told this was a one time opportunity. The Constitutional Convention was pretty explicit about this being a one time opportunity.

**Councilor Bill John Baker made a motion to table this until Mr. Hembree has the wording where everyone can read exactly what is going on the ballot before voting to place it on the ballot. Councilor Cowan Watts seconded the motion with a friendly amendment to table to the next Rules meeting. Councilor Bill John Baker accepted. Motion carried.**

**Councilor Cowan Watts clarified that all three items would be on the agenda as separate items. Chair Frailey agreed.**

3.

#### CHEROKEE NATION TRAVEL/LOCAL MILEAGE POLICY

Speaker Frailey announced Mr. Hembree had researched the law on travel and a revised policy has been provided today along with the Legislative Act covering the travel expenses. She brought this forward to implement the legislation and to clarify some confusion that seems to exist. Tribal Council travel is governed by LA-23-99 and states it covers reimbursement of travel expenses in addition to the compensation a Tribal Council member receives. A Tribal Council member shall receive reimbursement for mileage only for attending Council sessions or official Cherokee Tribal meetings called by the Council, or Administration. Accordingly a few Council members are not in compliance with this legislation and are listing mileage within their respective districts which does not agree with the law. Additionally past practice has been that Council members are limited to three trips outside the Cherokee Nation jurisdiction for training or other Cherokee Nation business. She stated there was not a written policy stating this therefore this policy is written in that spirit. Speaker Frailey stated since we are responsible for financial oversight of the Cherokee peoples money and as Speaker she is ultimately responsible for the Tribal Council's budget as it relates to travel she can not and will not approve mileage or travel that is not in compliance with the law. She stated if this is not agreeable then the legislation would need to amended then a policy would be implemented to comply with the amended legislation. She stated the policy before you today is in compliance with LA-23-99. Councilor Hoskin Jr. inquired if this is a policy that is being voted on or that is being implemented. Chair Frailey stated as Speaker she is implementing the policy. Councilor Hoskin Jr. inquired if the in district travel is the only item that is

out of compliance. Speaker Frailey stated the two major violations are charging for in district mileage and only three out of jurisdiction trips per year. She stated she had requested Mr. Doug Evans provide a five year history of the Tribal Council budget. From 2007 to 2008 the travel has almost doubled from \$46k to \$91k and January 1 through January 28 our travel expenses are already \$32,884 for 2009. The travel budget is \$130k and at the rate it is going we will be over budget in a few months. Mr. Hembree stated LA-23-99 spells out the two things you can get mileage reimbursement for which are Council meetings or meetings called by the Administration. He stated if you are on a board of an entity then it is a Council meeting because you are part of the ex-officio advisory board. Councilor Hoskin Jr. inquired if no travel outside of the Continental United States is a policy or is there rules and regulations. Chair Frailey stated she is looking at it from a budget standpoint. Councilor Cobb inquired as to a reasonable period of time as far as turning in mileage. Chair Frailey stated the staff recommended every 30 days. Councilor Jack Baker stated the At Large Councilors have several community meetings that they attend each year which are outside of the jurisdiction. He questioned the limit to three trips a year and if the At Large Councilors should be included in this limit. Mr. Hembree stated if an official meeting of the Cherokee Nation is in your district you would receive mileage. He stated this includes board meetings for advisory board members. Chair Frailey suggested to Councilor Jack Baker as Chair of Executive and Finance to review the budget if there is desire to change it from a maximum of three trips per year. Councilor Glory-Jordan inquired if the \$32K is mileage expense. Chair Frailey stated it is travel expense. Mr. Doug Evans stated the travel category is not mileage that mileage is under transportation. Mileage is segregated from travel to show over night stay travel compared to conducting ordinary business mileage. Councilor Anglen stated since this Act was enacted in 1999 our districts have changed dramatically. He stated he and Councilor Cobb attend three meeting every month called by the community. Administrative staff is in attendance at each one and he and Councilor Cobb feel obligated to attend. At Large Councilors were not in existence when this legislation was enacted. He suggested looking at doing something differently. Councilor Soap stated we should be careful with picking out one month and saying this is what the expected travel budget is going to be for the remainder of the year. He asked how the Council's budget for travel ended in 2008. Mr. Evans stated in 2007 we had a \$38,000 budget and spent \$40,000. He stated he reallocate funds around the end of the year to utilize funds from vacant positions. In 2008 the same thing happened, we had a \$60,000 budget and spent \$62,500. This year there is an \$80,000 budget. He stated he could and will manage the budget within what this body wishes. Councilor Soap stated it is interesting to hear there is a trend occurring. He inquired if it would be better from an accounting standpoint to have a certain allocation versus a three trip designation. Mr. Evans stated it would be easier to budget as a flat rate per person but each Councilor would have to keep track and anticipate their travel costs. Councilor Bill John Baker stated we have had a joint council meeting and the inauguration this year which will skew the front end of this budget. He stated he would not agree to allocating so much per Councilor due to some Councilors who don't travel with the exception of joint council or special events such as the inauguration and others have purposes to need to travel more often. He stated he wanted to guard against restricting travel when it is important. He voiced concern for excluding Hawaii from allowed trips due to their premier language program. He applauded the policy but stated it may need to be tweaked some. Councilor Cowan Watts stated this policy is a long time coming. She stated she would be advocating to have some reconsideration. She requested this item to be on the agenda next month as well. She requested clarification that as a advisory board member of CNE if she would get mileage since the meetings are within her district. She inquired if the language might need to be changed to reflect this. She questioned mileage for board meeting of the Claremore Indian Hospital as she is an advisory board member on

behalf of the tribe appointed by the Administration. Mr. Hembree responded if appointed by the Council it is part of the Council budget and if appointed by the Administration it should be the administrations budget. Councilor Crittenden stated he hopes he hasn't violated the local travel budget and if he has he would reimburse. He inquired if there would be an audit process to reclaim miss spent funds. Speaker Frailey stated she sees it as from this point forward. Councilor Fishinghawk inquired as to how much was budgeted for travel to Red Clay. Mr. Evans stated it would have to be absorbed in the budget that it came about after the budget was approved. Councilor Fishinghawk inquired as to who is responsible for placing the Council's travel on the website. Mr. Evans stated there is a link on the legislative branch site. The 2007 should be available, the spreadsheet was signed off on last summer. He stated the accounting department prepares the spreadsheets for all of the travel then it is sent here for verification and once it is in agreement it is the accurate travel cost of this branch of government then the okay is given for placement on the web and in the Phoenix. Mr. Evans stated they are currently working on the 2008 travel for placement on the web and in the Phoenix. Councilor Thornton stated he has served two terms and never charged in district mileage and this term he has. He questioned if this Act had been amended to allow council members living in Cherokee County to get mileage to Council meetings and were not able to do before. Mr. Hembree stated he didn't recall it and wasn't aware of any amendment. Councilor Thornton stated you should be able to charge mileage to community meetings within your district if asked to go. He stated with the high gas prices it was becoming very expensive. He stated he was told the Council was allowed three different meetings outside the jurisdiction and some didn't count as part of those three such as Joint Council or a National Convention. Chair Frailey suggested he meet with Mr. Hembree and suggest changes to the legislation. Councilor Glory-Jordan called point of order. She inquired if this is the rules from this day forward unless they are changed by this Council later on. Chair Frailey agreed and stated it would be on next months agenda if there are revisions or amendments. Councilor Buzzard stated this was passed in 1999 and agreed with Councilor Thornton regarding the difference in gas prices. He stated when he took this job he knew what it paid and he took it as a full time Councilor. He stated he doesn't have a retirement or another job therefore the gas adds up. Different things fit different people in different areas. Councilor Bill John Baker stated in the past if you received an invitation to speak at an event it didn't count as one of your three trips. Mr. Hembree stated the last sent of the policy it states "if a TCM is required to travel outside the jurisdiction on official Cherokee Nation business such limitations shall not apply".

**Chair Frailey agreed to this item being on the agenda next month for possible changes or revisions.**

## NEW BUSINESS

1. A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 3 OF THE CHEROKEE NATION CODE ANNOTATED - SALES TAX; ADDING EXEMPTIONS FOR ONE HUNDRED PERCENT (100%) PERMANENTLY DISABLED VETERANS

**Sponsors:** Councilor Chuck Hoskin,

*Councilor Hoskin Jr. stated this amendment allows for an exemption for sales tax for 100% disabled veterans.*

**Councilor Hoskin Jr. moved for the approval. Councilor Bill John Baker seconded the motion. Motion carried.**

- 2. A LEGISLATIVE ACT AMENDING LA#01-01, "THE CHEROKEE NATION MOTOR VEHICLE LICENSING AND TAX CODE"; AMENDING AND ADDING DEFINITIONS;

**Sponsors:** Councilor Chuck Hoskin,

**Councilor Hoskin Jr. moved for the approval. Councilor Bill John Baker seconded the motion. Motion carried.**

- 3. A RESOLUTION EXPRESSLY WAIVING THE SOVEREIGN IMMUNITY OF THE CHEROKEE NATION AND OF CHEROKEE NATION HOME HEALTH SERVICES TO THE EXTENT IT MAY EXIST, AS IT APPLIES TO THE BANGFIRST AND CHEROKEE NATION HOME HEALTH SERVICES LOAN AGREEMENTS

**Sponsors:** Councilor Harley Buzzard and Councilor Curtis Snell

*Councilor Buzzard stated this is a request for a limited waiver of sovereign immunity to move forward with the purchase of a nursing home in Jay. Mr. Rick Richards stated the limit would be \$900,000 for total purchase price and operating capitol.*

**Councilor Buzzard moved for the approval. Councilor Cowan Watts seconded the motion. Motion carried.**

ANNOUNCEMENTS

*Secretary of State, Melanie Knight, announced they have been supporting the local shelters, the feeding stations and the fire departments with MRE's, water, and support. She stated based on a recommendation from Councilor Fishinghawk they have hired day labors by contract to do tree cutting. First priority was clearing roads, second priority was driveways of the elderly and disabled. This task should be complete by next week. She personally thanked Councilor Fishinghawk for the daily alerts of what needed to be done and where they needed to be to help with the disasters of the ice storm. Ozark Electric is reporting today that they have 9,000 customers still without electric in Oklahoma and Arkansas.*

ADJOURNMENT

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

STAFF PRESENT:

<i>Diane Hammons</i>	<i>Vickie Hanvey</i>	<i>Shay Smith</i>
<i>Rick Richards</i>	<i>Shelley Butler-Allen</i>	<i>Gregg Simmons</i>
<i>Sharon Swepston</i>	<i>Doug Evans</i>	<i>Cheif Chad Smith</i>
<i>Melanie Knight</i>	<i>DeNita Cox</i>	

VISITORS PRESENT:

<i>Todd Hembree</i>	<i>Gina Olaya</i>	<i>Debra Wilson</i>
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APPROVAL / DISTRIBUTION

**Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator**

**Motion to approve minutes made by:** *Jack Baker*

**Minutes attested and concurred by:** *Meredith Frailey*

**Date:** *2/26/09*