



Council of the Cherokee Nation

Meeting Minutes

Executive and Finance Committee

Thursday, May 28, 2009

3:00 PM

Legislative Conference Room

CALL TO ORDER

Chair Jack D. Baker called the meeting to order at 3:04 p.m.

INVOCATION

Councilor Snell gave the invocation.

ROLL CALL

Present 15 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Buel Anglen; Jack D. Baker; Tina Glory Jordan; Jodie Fishinghawk; Janelle Fullbright; Harley Buzzard; Curtis Snell; Chris Soap; Bradley Cobb; Chuck Hoskin, Jr. and Julia Coates

Absent 1 - Meredith Frailey

Late Arrival 1 - Cara Cowan Watts

APPROVAL OF MINUTES

Councilor Bill John Baker made a motion to approve the April 30th regular session minutes. Councilor Garvin seconded the motion. Motion carried.

REPORTS:

Financial Report/Treasurer Report - Callie Catcher

Ms. Catcher offered to answer questions from her written report. Councilor Soap requested an update on the landfill in regard to accounting. Ms. Catcher stated the fund in the budget modification is the accumulative fund deficit after everything was cleared out. The biggest contributor to the deficit was the site development cost that had not been completely written off. She stated she waited to close the account until the transition to CNB was complete.

Cherokee Nation Enterprises - David Stewart

Mr. Slaton gave an overview of the monthly report. He announced they opened floors four through ten on the new tower in Catoosa. The expansion continues on phase II of the expansion at West Siloam. Once phase II is complete they will convert the old food court area into meeting room space. The competition opened their doors in late March and hasn't had an effect in Catoosa. They are steady at

59% Cherokee employment. A noticeable reduction in turnover has occurred since the implementation of the new minimum wage. Councilor Cowan Watts inquired if an impact study had been completed regarding the savings from the lack of turnover. Mr. Slaton stated it has not been done and isn't sure it has been quantified in terms of dollars. They are working on floors 17 through 19 in Catoosa and the Hard Rock theme has been rescheduled for the first of August. Councilor Buzzard inquired about a projected start date for the hotel at West Siloam. Last Tuesday the Board authorized them to proceed with the hotel at West Siloam. They bid the project at \$28.7ml. The project is will have 144 rooms and has an estimated timeframe of one year. Councilor Garvin inquired if CNE had an interest in the race track in Oklahoma City. Mr. Slaton stated they are not interested. It is too far out of their market and the price is steep. Councilor Buzzard inquired at to what the projected income will be with Hard Rock. Mr. Slaton stated he doesn't have those numbers but will make sure the information is relayed.

Cherokee Nation Businesses - David Stewart

Mr. Slaton announced the consolidated net income for all entities is \$6.4ml for April. They have used approximately \$29ml of the line of credit. The opening date for the landfill has been moved to the first of July. He stated there is a lot of coordination at this time with the Nation to form some industry advisory teams.

Cherokee Nation Industries - Robert Drvostep

Mr. Drvostep reported CNI's revenue for the month of April totals \$7.4ml with a pre tax loss of \$330,000. Both the revenue and loss were close to forecast. Mr. Collins stated some of the shortfalls have come in construction and telecommunications. AT&T has awarded them their Legacy T business. They continue to work with Version Wireless who has made verbal commitments. They signed the construction contract for Eastern Electric Coop of Okmulgee and look to break ground the first week of June. The Hastings Hospital administrative office design build is being finalized and is a \$3.3ml project. They are waiting on the \$17ml HUD apartment complex job to be finalized and hope to break ground in July. The addition of Red Wing has opened up new opportunities and capabilities. They have just over \$300ml in quotes that have gone out over the last month. Councilor Bill John Baker inquired if they are on time and budget with the Bixby ball fields. Mr. Collins stated they would be on time and on budget. He stated they have lost 20 days to rain and will make them up by working evenings and weekends. Councilor Buzzard requested information about the Kelleyville shop. Mr. Collins stated it is a machine shop with 30 to 33 employees. The shop makes metal parts, milling and grinding. They do have some assembly work.

Career Services/Employment - Diane Kelley

Ms. Kelley provided a handout regarding a TERO vender appeal that went before the Administrative Appeals Board. They upheld the certification process which was denied. She provided a handout pertaining to the Cherokee Nation procurement website. She announced a TERO vendor has developed a web site and is going to put all of the TERO companies on the website. She stated she would continue to provide the Career Service report and Ms. Knight will continue to report for Commerce but they are providing a combined report on Certified Indian Owned Businesses. He provided a draft report. On a quarterly basis they will provide a more detailed report. Councilor Fishinghawk questioned why the water bid wasn't broke down or why the extra step wasn't taken to buy the printing machine. Ms. Kelley stated Ms. Anna Knight will report on this during her report. Councilor Fishinghawk stated 16 cars were put to bid on the web and 5 went to a TERO

certified company in Stilwell. The other 11 cars went to Shawnee Mission in Kansas who isn't TERO certified. She questioned why Starr wasn't given the opportunity to rebid. She stated before the economy went bad Starr employed 23 Cherokees and are now down to 10 employees. She questioned if the TERO office was included in the bids. Ms. Catcher stated the bid process was performed the way they do a request for bid and may need to be reviewed for future enhancements to the TERO process. The current process is to submit your best price when submitting. The only time the vendor is contacted is if there is a wide difference in the bid amounts. When the vendor is contacted they are not asked to resubmit they are merely asked if they understood the process. She stated they do not have the staff to go back and call the TERO vendor if they are not the low bid. Councilor Fishinghawk inquired if there is anything in the law stating they can't go that extra mile for the Cherokee. Ms. Catcher stated TERO, Procurement and The Small Business Assistance Center have held numerous discussions but are not at the point where this could be implemented. They must check regulations to see if there are any issues with fulfilling the sealed bid process. They are trying to give the best opportunities to the TERO vendors while staying in the confines of federal regulations and any other requirements they must follow. Ms. Kelley commented they are working toward a solution but need time. Councilor Fishinghawk stated the process was ridiculous and she is willing to go that extra mile for the people but isn't sure they are. Councilor Buzzard stated most corporations get the bid due to being able to out bid the small firms. He stated there has to be a mechanism to be able to help the small Indian companies more. Ms. Kelley stated they have received marching orders from Chief Smith and are working toward correcting the issue. She stated she wasn't sure if the outcome would have been different if TERO was present at the bid opening. She has spoken to the owner of the TERO Company and he was very humble that he did receive the bid for the 5 cars. Councilor Cowan Watts stated the bid failed the TERO vendor because it wasn't broke out. Even if TERO was present it was already designed to push out or create a barrier for the TERO vendor to participate without partnering with a non TERO vendor. She stated there is language in the TERO law that speaks to artificial barriers although it is more geared toward employment and not bidding. Councilor Fishinghawk stated there had been discussion on whether TERO applied to the government or not she inquired what the status is now and if it needs to be part of the legislation. Mr. Hembree stated it is the pleasure of the committee. He stated the Cherokee Nation government is not applicable to TERO. Councilor Fishinghawk requested Mr. Hembree draft legislation for next month.

Commerce - Anna Knight

Ms. Knight offered to answer questions from the Commerce report. She stated the bid went out bundled together because Love's was providing the trailers and banners for free. She stated at this time they are considering other options such as purchasing a banner machine. Councilor Fishinghawk stated the bid was given to Love's for supplying the extras. Ms. Knight agreed. She stated by bidding together money was saved. Councilor Fishinghawk stated the banners have the date and it is common sense for the company to place it on there to get the business the next year. Ms. Knight stated the date isn't on the banner just that the quality of the banner doesn't last more than a year. She stated they are looking to purchase a banner machine and speaking to departments to determine how many would use the machine. Councilor Fishinghawk stated this machine should have been thought of years ago. Councilor Cowan Watts suggested using the Business Tech class participants to create the banners through a partnership. Ms. Melanie Knight relayed for Ms. Kelley that a TERO vendor has 10 days to voice a complaint once the award has been given.

CONSENT ITEMS:

T.E.R.O. CERTIFICATIONS

Councilor Anglen moved to approve the certifications as presented. Councilor Thornton seconded the motion. Motion carried.

CEMETERY RESTORATION ASSISTANCE APPLICATIONS

Mr. Doug Evans stated there are additional applications not included in the book. District 1 – Price Cemetery, District 8 – Charley Cemetery, District 1 – Hicks Cemetery, District 4 – Phillips Family Cemetery, District 3 – Benge Family Plot and Roasting Ear Cemetery, and District 5 – Jumper Cemetery. Councilor Bill John Baker moved to approve. Councilor Thornton seconded the motion. Motion carried. Mr. Evans asked in follow up if the Council members are getting notification of the cemeteries by email or fax. Councilor Buzzard responded he hasn't received any. Mr. Evans stated he would check the process.

LAW ENFORCEMENT REQUESTS

In addition to the ones on the list there are two additional Dewey Police Department and Ramona Police Department. Councilor Bill John Baker made a motion for approval. Councilor Thornton seconded the motion. Motion carried.

COMMUNITY ASSISTANCE

Mr. Evans announced in addition to the report there are the following items.

*Cedar Grove Church, Councilor Soap - \$800
Belfone School, Councilors Fullbright and Thornton - \$400 each
Legacy Youth Festival, Councilor Garvin - \$300
New Life, Councilors Bill John Baker and Glory-Jordan - \$200 each
Sperry Schools, Councilor Cobb - \$3,000
Washington County Cherokee Association, Councilor Cobb - \$600
Greasy Community Organization – Councilors Crittenden, Fishinghawk, B. Baker - \$250 each
Marble City Food Pantry, Councilor Fullbright - \$750.*

Councilor Fishinghawk inquired as to the check process and timeline for mail out. She further questioned the possibility of having a letter included with the check. Mr. Evans stated the check request go to accounting and cut the check. The checks go to Administration where the Chief places a letter with them and then are mailed. Ms. Catcher stated if the Council would also like a letter placed with the check it can be done. She requested the letter be placed with the check request when taken to accounting. Mr. Evans inquired if there is a reason why the checks couldn't be mailed out by the Legislative Branch. Ms. Catcher stated there isn't a legal reason it is just done there for internal control. She stated the letter currently included does give appreciation to the Council member. Chair Jack D. Baker suggested Ms. Catcher met with Gayle Miller and Mr. Evans in this regard.

Mr. Hembree stated there has been dispute to comments he made earlier concerning the applicability of the Cherokee Nation with TERO as it applies to procurement. He stated to clear the confusion he read Section 8 Title 40 Section 1021.

Councilor Garvin made a motion to approve the Community Assistance requests. Councilor Thornton seconded the motion. Motion carried.

Councilor Crittenden requested a cemetery be considered. He apologized for the late submission. He made a motion to approve Killer cemetery in Adair County. Councilor Fishinghawk seconded the motion. Motion carried.

ROADS

No projects this month. Mr. Evans stated there are several reallocations. District 5 is reallocating \$40,000 of motor fuels split between the District Councilors for the EW140 NS 520 road. Councilors Anglen and Cobb are receiving a refund on a completed project on 145th East Avenue. Councilor Buzzard will also receive a refund on the Tino project. Councilor Garvin moved to approve. Councilor Cowan Watts seconded the motion. Motion carried.

OLD BUSINESS

None pending.

NEW BUSINESS

1.

AN ACT AMENDING LEGISLATIVE ACT #19-08 AUTHORIZING THE COMPREHENSIVE BUDGET FOR FISCAL YEAR 2009 - MOD 8; AND DECLARING AN EMERGENCY

Sponsors: Councilor Jack D. Baker and Councilor Cara Cowan Watts

Mr. Evans stated this budget mod has an increase in grants of over \$1ml. He stated this is a \$9.3ml modification. The general fund has an increase of almost \$4ml. He gave an overview of his report. Discussion was held regarding contract health. Ms. Catcher stated the request is to add an additional day to the docket. Councilor Glory-Jordan stated she moved to table the request last month and didn't think it had been brought off of the table for discussion. Councilor Bill John Baker stated it is in the mod. Councilor Bill John Baker made a motion to table the District Court request to see additional information. Councilor Hoskin Jr. seconded the motion. Motion carried to table to next month. Mr. Evans continued with his mod review. Councilor Cowan Watts requested a full accounting history of the funds expended and made from the landfill. Councilor Fishinghawk questioned funding new initiatives with carry over. Mr. Evans stated it is a new initiative new equipment reserve. He stated he is unclear as to what this equipment is as compared to the big health equipment replacement fund from another budget. He stated a list of equipment justifying the \$7.5ml tied up carry over funds is important for tracking. Ms. Catcher stated she has not problem supplying a list of equipment needs. She stated both pots of money are discretionary funds. She stated the \$3ml requested last month increased the reserve and the bulk will be used to improve the broad band. The \$1ml request for this month is for emergency use. She stated we now operate a 24 hour facility and if a piece of equipment goes down in this hospital there needs to be a pot of money available to get a replacement piece of equipment. Mr. Evans inquired to the Administration if they are applying for the broad band grants through the stimulus funds. Ms. Catcher stated they are. Mr. Evans stated if there is success with the grants the grant money should reimburse these budgets. Ms. Catcher stated this is correct. If the grants are not received they still need to be able to pursue the broad band.

Councilor Cowan Watts moved to approve with amendments. Councilor

Anglen seconded the motion. Motion carried.

2. SHOULD CHEROKEE NATION LICENSE RETAIL SMOKE SHOPS TO SELL ALCOHOL AND/OR OPERATE GAMING MACHINES (Discussion Only)

Sponsors: Councilor Chuck Hoskin,

Councilor Hoskin Jr. stated the goal is for discussion prior to any legislation coming forward. He requested input from Mr. Jamie Hummingbird of the Gaming Commission. Mr. Hummingbird provided a handout of information for everyone to keep in mind as this is being considered, discussed and debated. He stated the concept of individually owned and operated smoke shop gaming is provided for within the framework of the Indian Gaming Regulatory Act. He stated the process of regulation and properly monitoring and overseeing these types of operations will be cumbersome. Some of the existing language in the regulations on page 4 under Section 502.15 states that the CN under the terms of the compact is ultimately responsible for insuring compliance with the terms of the compact. The definition of enterprise may cause a problem as it talks about the tribal entity or tribal agency and doesn't make specific mention of anything along an individual basis. An option that is mentioned is management contracts and could be explored as a possibility. If there is a complication with the compact then those games may not be available which would leave Class II gaming. Councilor Cowan Watts inquired if the gaming licenses would also be required of the smoke shops in regard to the games. Mr. Hummingbird stated most definitely more specifically for the owners, lessees and employees. Part of the handout is a brief table of internal control standards that are required in reporting and accountability measures to be taken by an operator of the gaming facility. Councilor Hoskin Jr. inquired if there is anything in IGRA that prohibits us from adopting an ordinance to license individual smoke shops. Mr. Hummingbird referred to page 4 where it discusses individually owned and operated in Section 522.10. He stated IGRA does allow it but must be a part of our gaming ordinance which would have to be modified. The modification would then be subject to the review and approval of the NIGC. Councilor Soap inquired if other tribes have these types of arrangements. Mr. Hummingbird there isn't a tribe he is aware of that authorizes individually owned. The closest would be the Creeks where they have authorized gaming to be conducted by community groups. There hasn't been a shortage of press on the difficulties they have had recently with the Chief of the Creeks and the Community Groups on the issue. Councilor Hoskin Jr. announced he had no further questions and gave appreciation for the time on the agenda.

3. A LEGISLATIVE ACT AMENDING TITLE 68 OF THE CHEROKEE NATION CODE ANNOTATED - ADDING PROVISIONS FOR TAX REBATE OF LICENSED TOBACCO RETAILERS

Sponsors: Councilor Chuck Hoskin,

Councilor Hoskin Jr. announced this is substantially the same legislation considered a few months back. The substantial portion of this legislation is the \$1.50 rebate to the border shops as that is defined in the compact. There is an eighteen month sunset clause that could expire prior to that if the neighboring states increase their tax rates during the eighteen month time period. He stated clearly when the tribe adopted the 2008 compact there was a significant and immediate tax increase on smoke shops. The burden of that tax increase fell most heavily on the border shops. The compact the Nation negotiated provided for a rebate to border smoke shops. Ms. Swepston stated we must maintain a \$1.50. Councilor Hoskin Jr. stated under the old compact the border shops around Arkansas were paying \$3.08 to the State and .50 to the tribe. Along the Kansas Missouri area they were paying .58 to the State and .50 to the tribe. Interior shops paid \$8.58 to the State and .50 to the tribe. Ms. Swepston agreed and stated the interior shops did receive a refund back from

the State and the .50 to the tribe was waived. Councilor Hoskin Jr. stated with the new compact all shops pay \$6.65. The new compact gave a tax cut to the interior shops and a substantial tax increase to the border shops. He stated the border shops took a tremendous hit with these compact changes and didn't have time to prepare for the level of increase. He stated the numbers provided by Ms. Swepston at the last meeting show the trend for the border shops is plummeting. He stated this legislation gives the shops some modest relief in a very finite period of time and gives them the opportunity to mitigate the burden of the significant tax increase that came with the stroke of a pen overnight. This rebate may allow survival of the border shops which will save jobs of Cherokees and revenue for the Cherokee Nation.

Councilor Hoskin Jr. moved for approval. Councilor Cowan Watts seconded the motion. Councilor Snell stated tobacco is a terrible preventable disease and costs approximately 400,000 lives per year in the United States. W.W. Hastings Hospital over a four year period paid out \$73ml. He stated he would be in opposition. Councilor Bill John Baker inquired as to the number of border shops. Ms. Swepston stated there are only five or six now along the Kansas Missouri borders due to the Arkansas rate changing to \$11.50. Councilor Hoskin Jr. stated he has a great respect for Councilor Snell and would be a fool to try to argue that cigarettes were healthy. He stated if unilaterally disarming the sale of cigarettes would make a significant difference in the health of our people he would jump on board with the complete elimination on not only tobacco sales but also liquor sales. He stated he doesn't feel it would make a dimes worth of difference in our health care cost or our health. It would give the market share to the Quick Trips of the World which he can't agree with. Councilor Cobb asked Mr. Joe Lane for his outlook and time frame of what will happen over then next six months to a year. Councilor Cobb inquired if this rebate would just be a band-aide. Mr. Lane stated this would not be a band-aide. Right now it would allow them to react to other compacts the State has signed with some of the competition. They have filed a letter to the State of Oklahoma asking for favored nation status with the Eastern Shawnee at the .58 rate. They are the competition and are out pricing them by \$6.00 per carton. He stated he does see an end if the State is fair in the compact. He stated as long as there is a tax advantage their business will continue to go up because the people can not afford to pay the high cost of cigarettes. Councilor Cobb inquired if Mr. Lane felt a change would happen in a year's time. Mr. Lane stated not a year but it would in eighteen months. Councilor Hoskin Jr. called for the question. Chair Jack D. Baker stated he had one other Councilor to speak. Councilor Cobb offered a friendly amendment for the budget cycle October 1, 2010. Councilors Hoskin Jr. and Cowan Watts accepted. Chair Jack D. Baker allowed Councilor Buzzard to have the floor prior to the call for the question. Councilor Buzzard commented he would rather have our Cherokee people selling the tobacco rather than the Quick Trips.

The motion to approve with the amendment carried with the following roll call vote.

Yea: 10 - Buel Anglen; Bill John Baker; Harley Buzzard; Bradley Cobb; Joe Crittenden; Jodie Fishinghawk; Don Garvin; Chuck Hoskin Jr.; Tina Glory-Jordan; and Cara Cowan Watts

Nay: 5 - Jack D. Baker; Janelle Fullbright; Curtis Snell; Chris Soap; and David Thornton

Not in Room: 1 - Julia Coates

4.

A LEGISLATIVE ACT MAKING AVAILABLE FUNDS FOR LOANS/REBATES OF TOBACCO/SMOKE SHOP OWNERS

Sponsors: Councilor Chuck Hoskin,

Councilor Hoskin Jr. stated earlier \$1ml was appropriated for this very purpose however details were not put in place in the form of legislation. This is largely a housekeeping measure to effectuate what was put forth in the budget.

Councilor Hoskin Jr. moved to approve. Councilor Cowan Watts seconded the motion. Motion carried with the following roll call vote:

Yea: 11 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Don Garvin; Cara Cowan Watts; Buel Anglen; Tina Glory Jordan; Jodie Fishinghawk; Harley Buzzard; Bradley Cobb and Chuck Hoskin, Jr.

Nay: 3 - Jack D. Baker; Curtis Snell and Chris Soap

Abstain: 1 - Janelle Fullbright

Not In Room: 1 - Julia Coates

ANNOUNCEMENTS

ADJOURNMENT

Councilor Cowan Watts moved to adjourn. Councilor Crittenden seconded the motion. Motion carried at 5:20 p.m.

STAFF PRESENT:

<i>Callie Catcher</i>	<i>Melanie Knight</i>	<i>Gregg Simmons</i>
<i>Sharon Swepston</i>	<i>Diane Kelley</i>	<i>Jon Overacker</i>
<i>Doug Evans</i>	<i>Jamie Hummingbird</i>	<i>Mike Miller</i>
<i>Anna Knight</i>		

VISITORS PRESENT:

<i>Robert Drvestep</i>	<i>Bryan Collins</i>	<i>Jim Ketcher</i>
<i>Todd Hembree</i>	<i>Shawn Slaton</i>	<i>Joe Lane</i>
<i>Terri Hardgrove</i>		

APPROVAL / DISTRIBUTION

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: *Bradley Cobb*

Minutes attested and concurred by: *Jack D Baker*

Date: *6/25/09*