



CHEROKEE NATION
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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Cherokee Nation Election Commission,
via Attorney Harvey Chaffin

Opinion Number: 2016-CNAG-02

Date Decided: December 9, 2016

This office has received your request for an official Attorney General Opinion in which you state:

[T]he Chairman of the Commission has respectfully requested that we ask for an official opinion of the Attorney General of the Cherokee Nation as to the definition of the word “Term” as it is used in the Cherokee Nation Constitution and whether a time in office of less than four years is a “term” under the Cherokee Nation Constitution.

You have asked, in essence, whether a period of time in office of less than four (4) years meets the definition of “term” as used in Article VI, Section 3, and Article VII, Section 1, of the Cherokee Nation Constitution for purposes of calculating term limits. For the reasons discussed below, it is the opinion of the Attorney General that a period of time in office of less than four (4) years does not meet the definition of “term” as used in these respective provisions and is excluded from a calculation of term limits. Thus, any candidate for elected office having served less than two (2) consecutive four (4) year terms of office is eligible to stand for re-election in the next general election.

TERMS AND LIMITATIONS OF ELECTED OFFICE UNDER THE CONSTITUTION OF THE CHEROKEE NATION OF 1999

1. Term Limits of Tribal Council Members

Article VI, Section 3, of the Cherokee Nation Constitution sets forth the qualifications for membership on the Council of the Cherokee Nation (“Tribal Council”). This section also defines the term of office and sets limits on the consecutive terms of office that one can hold. This section, in pertinent part, provides as follows:

Each Council member shall be elected in the general election for a term of four (4) years and until his or her successor is duly elected and installed. All Council members shall be limited to two (2) consecutive elected terms on the Council. All Council members having served two consecutive terms must sit out one (1) term before seeking any seat on the Council.¹

Article VI, Section 13, sets forth the procedure by which a vacancy on the Tribal Council is filled depending on the length of time remaining in the vacated term. This section, in its entirety, provides as follows:

In the case of removal, death, resignation or the inability to discharge the powers and duties of office of any of Council member, such seat shall be filled in the following manner: If more than one year 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 (90) days, unless a general election is to be held within one hundred and twenty (120) days from the vacancy at which time this special election may be held as part of the general election; if one year or less 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.²

2. Term Limits of the Principal and Deputy Principal Chief

Article VII, Section 1, of the Cherokee Nation Constitution defines the term of office and sets term limits for the Principal Chief. This section, in pertinent part, provides as follows:

The Principal Chief shall hold office for a term of four (4) years. No person having been elected to the office of Principal Chief in two (2) consecutive elections shall be eligible to file for the office of Principal Chief in the election next following his or her second term of office.³

¹ Cherokee Nation Const. art. VI, § 3.

² *Id.* at art. VI, § 13 (amended June 25, 2011).

³ *Id.* at art. VII, § 1.

Article VII, Section 3, defines the term of office for the Deputy Principal Chief. This section, in pertinent part, provides that the Deputy Principal Chief shall serve “for a term of four (4) years at the same time and in the same manner as herein provided for the election of the Principal Chief. The Deputy Chief shall be subject to the same term limitations as provided for the Principal Chief in this Constitution.”⁴

Article VII, Section 4, provides for the succession of the Deputy Principal Chief and the Speaker of the Council, respectively, to the offices of the Principal and Deputy Principal Chief when vacant. This section provides as follows:

In the case of the absence of the Principal Chief from the office due to death, resignation, removal or inability to discharge the powers and duties of office, the same shall devolve upon the Deputy Principal Chief for the remaining portion of the four (4) year term to which the Principal Chief has been elected. In case of disability, such powers shall continue during the term of such disability.

In the event of the death, resignation, or removal of the Deputy Principal Chief, or his or her inability to discharge the powers and duties of the office, the person who is then the Speaker of the Council shall succeed to the office of the Deputy Principal Chief for the balance of the term. In the case of temporary disability, said person shall serve as Acting Deputy Principal Chief for the duration of the disability and thereafter shall reassume the office of Speaker.⁵

ANALYSIS

When interpreting the provisions of the Cherokee Nation Constitution, this office looks first to the text of the document itself.⁶ In doing so, this office interprets the language contained therein as the people voting on it would have understood it and in the sense most obvious to the common understanding at the time of its adoption.⁷ If this office can reach its conclusion by looking to the text alone, there is no need to look to additional sources.⁸ Where the text of the Constitution is clear and unambiguous, this office will take no liberty in searching for meaning beyond the instrument itself.

⁴ *Id.* at art. VII, § 3.

⁵ *Id.* at art. VII, § 4 (emphasis added).

⁶ See *DeMoss v. Jones*, JAT No. 96-01-K, 7-8 (1998) (adopting the Oklahoma Supreme Court’s rule for interpretation of the Oklahoma Constitution).

⁷ See *id.*, 8 (providing that words or terms used in a constitution, being dependent on ratification by the people voting upon it, must be understood in the sense most obvious to the common understanding at the time of its adoption, although a different rule might be applied in interpreting statutes at legislative acts).

⁸ See *Allen v. Cherokee Nation Tribal Council*, JAT-04-09 (2006) (stating that if the court can reach its conclusion by looking to the plain language of a legislative act or constitutional provision there is no need to look to additional sources).

In Article VI, Section 3, and Article VII, Section 1, the words “term” are accompanied by the words “four (4) year(s)”.⁹ It is clear from the text alone that the authors of these provisions intended a “term,” as used therein, to be “four (4) years” long. In normal election cycles, such terminology would be dispositive of this issue. However, in the present situation, Tribal Council members Joe Byrd and Frankie Hargis have previously served, and in the case of Victoria Vasquez is currently serving, a period of time in office of less than four (4) years following special elections.¹⁰ Similarly, Principal Chief Bill John Baker and Deputy Principal Chief S. Joe Crittenden have both previously served less than four (4) years following the lengthy appeals of the 2011 Principal Chief’s election and subsequent special election.¹¹ Thus, the issue now before us questions how we apply limitations on subsequent terms to periods of time in office that do not satisfy the “four (4) year” test?

The framers of the 1999 Constitution were well-educated and knowledgeable of Cherokee Nation legal history.¹² They understood the historical and legal implications of the language they chose in drafting the provisions of the Constitution. Therefore, when the framers spoke, they spoke purposefully and intentionally in defining the terms and limitations of elected office. Article VI, Section 3, and Article VII, Section 1, of the Constitution, respectively, define the terms and limitations of elected office in clear and unambiguous terms.¹³ While these two provisions both define a term of office as four (4) years limited to two (2) consecutive terms there are distinctions within these two provisions which demonstrate the intent of the framers in defining term limits.

Article VI, Sections 3 and 13,¹⁴ respectively, define the terms and limitations of elected office for Tribal Council members in clear and unambiguous language. Article VI, Section 3, provides that each Council member “shall be elected in the general election for a term of four (4) years” which “shall be limited to two (2) consecutive elected terms”¹⁵ Article VI, Section 13, sets forth the procedure by which a vacancy on the Tribal Council is filled and provides for an term of office

⁹ *Supra* nn. 1, 3.

¹⁰ Council member Hargis was elected in a special election on December 2, 2011 and then elected to her first four (4) year term in the general election on June 22, 2013. Council member Byrd was elected by special election on January 14, 2012 and then elected to his first four (4) year term in the general election on June 22, 2013; Council Member Vasquez was elected by special election on October 12, 2013 and is currently serving a period of time in office of less than four (4) years and has not served her first term for the purpose of applying term limits.

¹¹ Principal Chief Baker took the oath of office on October 29, 2011, following a special election on October 14, 2011. Deputy Principal Chief served as Principal Chief from August 14 to October 29, 2011. Both are currently serving their first term for the purpose of applying term limits.

¹² *See Allen*, JAT-04-09 at 15.

¹³ *Supra* nn. 1, 3.

¹⁴ *Supra* nn. 1-2.

¹⁵ *Supra* n. 1.

of less than four (4) years in specific circumstances.¹⁶ The fact that these two provisions define a term of office differently shows that the authors knew exactly what words to use in defining a term of office.¹⁷ Had they intended the definition of “term” in Section 3 to include a period of time in office of less than four (4) years, such as provided for in Section 13, they would have done so in the same clear and unambiguous language. However, such language is not present in these provisions. Thus, a period of time in office of less than four (4) years resulting from a special election does not meet the definition of “term” for purposes of calculating consecutive terms of office. Any Tribal Council member who has not served two (2) consecutive four (4) year terms following a general election shall be able to stand for re-election following the completion of his or her first term of office.

Article VII, Sections 1 and 4, respectively, define the terms and limitations of the offices of Principal Chief and Deputy Principal Chief in clear and unambiguous language. Article VII, Section 1, provides for a term of four (4) years and that “[n]o person having been elected to the office of Principal Chief in two (2) consecutive elections shall be eligible to file” for re-election “in the election next following his or her second term of office.”¹⁸ Article VII, Section 4, provides for the succession of the Deputy Principal Chief and the Speaker of the Council, respectively, to the offices of the Principal and Deputy Principal Chief when vacant.¹⁹ As with the provisions pertaining to Tribal Council members, these provisions too must be read together in order to give meaning to the intent of the framers. The fact that these two provisions carefully define a term of office in one instance, and provide for an abbreviated term of office under specific circumstances elsewhere, shows that the authors knew exactly what words to use in defining a term of office.²⁰ Had they intended the definition of “term” in Section 1 to include a period of time in office of less than four (4) years, such as provided for in Section 4, they would have done so in clear and unambiguous language. Again, such language is not present in these provisions. Thus, a period of time in office of less than four (4) years, such as those served by Principal Chief Bill John Baker and Deputy Chief S. Joe Crittenden following the special election in 2011, do not meet the definition of “term” for purposes of calculating consecutive terms of office. Principal Chief Baker and Deputy Chief Crittenden are, likewise, eligible to stand for re-election in the next election cycle because they have only served one “term” per the constitutional definition.

This conclusion is supported by the discussion of the matter by the framers during the 1999 Constitution Convention. It was here that the delegates discussed amending the language of

¹⁶ *Supra* n. 2.

¹⁷ *See Allen*, JAT-04-09, at 11 (interpreting Article III of the 1975 Constitution’s usage of “by blood” requirement).

¹⁸ *Supra* nn. 3-5.

¹⁹ *Supra* n. 4.

²⁰ *See Allen*, JAT-04-09, at 11.

Article VII, Section 1, to include the words “full terms” to the definition of term limits.²¹ Following a lengthy debate, the delegates were satisfied that the plain language of the text, when read as a whole, provided for a term of office of four (4) years limited to two (2) consecutive four (4) year terms and that any period of time in office of less than four (4) years was excluded from a calculation of term limits.²² By the reasoning of the delegates, the first clause of the provision defines a term of office as four (4) years. This necessarily defines its meaning in the second clause for purposes of calculating a “second *term* of office.” Thus, because a period of time in office of less than four (4) years would not meet the definition of “term” in the first clause, any period of time in office of less than four (4) years would be excluded from a calculation of term limits in the second clause. Based upon such reasoning, the framers chose not to amend the definition to include the words “full terms” as the provision had already made this intent clear.

This interpretation is in keeping with previous opinions by the Office of the Attorney General. This office has previously opined on these same provisions with respect to filling a vacancy in the office of the Principal Chief.²³ In doing so, this office relied upon the maxim of construction *expression unius est exclusion alterius* (the expression of one thing is the exclusion of the other), which means that the enumeration of certain specifics in a provisions will be construed to exclude all things not enumerated. In other words, given that the framers specifically define a provision of law in one instance, but define a distinguishing provision on a similar subject elsewhere, it is assumed that the distinction was purposeful and intentional. Thus, where the framers have provided clear and unambiguous language, this office will take no liberty in searching for meaning beyond the instrument itself.

CONCLUSION

Article VI, Section 3, and Article VII, Section 1, of the Constitution, respectively, define the terms and limitations of elected office within the Cherokee Nation. In drafting these provisions, the framers defined a term of office as four (4) years limited to two (2) consecutive terms.²⁴ Elsewhere within these same provisions, the framers defined terms of office of less than four (4) years in clear and unambiguous language. By defining the terms of office differently within these respective provisions, the framers confirm they knew exactly what words to use in defining a term of office. Had they intended to include a period of time in office of less than four (4) years when defining term limits, they would have done so in the same clear and unambiguous language.²⁵ Absent such language, this office will take no liberty in adding or subtracting from

²¹ Cherokee Nation 1999 Constitution Convention, vol. 5, 41:10 (Mar. 2, 1999).

²² *Id.* at 41:1-42:13.

²³ See 2011-CNAG-01 (opinion of the Attorney General regarding vacancy in the office of Principal Chief).

²⁴ *Supra* n. 1, 3.

²⁵ See *Allen*, JAT-04-09, at 11.

this definition. Thus, it is the opinion of the Attorney General that a period of time in office of less than four (4) years does not meet the definition of “term” as used in these respective provisions and is excluded from a calculation of the term limits.

Council members Byrd and Hargis were each previously elected in special elections as defined in Article VI, Section 13, which resulted in a period of time in office of less than four (4) years. These periods of time in office of less than four (4) years do not meet the definition of “term” as used in Article VI, Section 3, and are excluded when calculating consecutive terms of office. Thus, these Council members have previously served one (1) four (4) year term of office and are eligible to stand for re-election in the general election following their first term of office. Additionally, Council member Vasquez was elected in a special election as defined in Article VI, Section 13, which resulted in a period of time in office of less than four (4) years. This period of time in office of less than four (4) years does not meet the definition of “term” as used in Article VI, Section 3, and is excluded when calculating consecutive terms of office. Thus, Council member Vasquez has not served a term of office and is eligible to stand for re-election in the next two general elections. Principal Chief Baker and Deputy Principal Chief Crittenden, respectively, have served periods of time in office of less than four (4) years following the protracted challenges to the 2011 Principal Chief’s election. These respective periods of time in office of less than four (4) years do not meet the definition of “term” as utilized in Article VII, Sections 1 and 3, and are likewise excluded when calculating consecutive terms of office. Similarly, Principal Chief Baker and Deputy Principal Chief Crittenden, having yet to serve second four (4) year terms of office, will each be eligible to stand for re-election upon completion of their present and first terms of office.



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