



Legislation Text

File #: CNCA-73, Version: 1

TITLE 73 - SOVEREIGNTY **Code of Federal Regulations**

Self-governance program, see 25 C.F.R. § 1001.1 et seq.

United States Code

Contracts for payment of money permitted certain tribes; payment for legal services, see 25 U.S.C. § 82a.

Treaties and contracts with the United States, see 25 U.S.C. § 71 et seq.

CHAPTER 1

SOVEREIGN IMMUNITY

§ 1. Short title

This act shall be known and may be cited as the Sovereign Immunity Act.

History

Source. LA 23-04, eff. June 17, 2004.

Library References

Indians <KEY>403.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 2. Purpose

The purpose of this act is to clarify Cherokee Nation sovereign immunity and authorize the Principal Chief to waive sovereign immunity on a limited basis for business transactions of Cherokee Nation-owned business entities in order to better fulfill the duties prescribed by the Cherokee Nation Constitution.

History

Source. LA 23-04, eff. June 17, 2004.

Library References

Indians <KEY>404.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 3. Definitions

For purposes of this chapter:

1. **"Act"** means an enactment of the Council as provided in the Constitution.
2. **"Business entity"** means any business entity in which the Nation is a majority owner.
3. **"Nation"** means Cherokee Nation.
4. **"Resolution"** means an enactment of the Council as provided in the Constitution.
5. **"Sovereign immunity"** means the preclusion of bringing suit against the government without its consent.

History

Source. LA 23-04, eff. June 17, 2004.

§ 4. Sovereign immunity

A. The Nation is a federally-recognized Indian Nation existing from time immemorial and retains the inherent right to preclude lawsuits under the doctrine of sovereign immunity.

B. The Nation does not consent to lawsuits in any court except by Legislative Act or Resolution of the Council of Cherokee Nation.

C. The Nation has the inherent right to waive, and grant authority to waive sovereign immunity with limitations as to time, place, manner, subject, and any other restrictions desired.

History

Source. LA 23-04, eff. June 17, 2004.

Library References

Indians <KEY>404, 405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 5. Delegation of authority as to business entities

The Principal Chief is authorized to execute a waiver of sovereign immunity and/or to agree not to raise the defense of sovereign immunity as to a business entity only as follows:

1. All waivers shall be in writing and signed by the Principal Chief and verified by the Secretary of State. A copy shall be filed and indexed in the Office of the Principal Chief and with the office of the Tribal Council. This signature authority shall not be delegated.
2. A waiver may be included in an agreement or contract containing other terms.
3. Except as provided in subdivision 5, all waivers shall contain provisions limiting:
 - a. Who may bring a claim. Only parties to a contract shall be eligible to bring a claim.
 - b. Type of claims allowed. Any waiver shall be limited to obligations or rights arising under a written contract or agreement in a breach of contract claim.
 - c. Types of relief or damages. The waiver shall be specifically limited to an award of actual or liquidated damages under the terms of the agreement. The waiver shall not allow recovery from the business entity for punitive or exemplary damages, nor shall the waiver allow recovery from any elected officials, officers or employees of Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees.
 - d. Choice of forum. Preference for jurisdiction of lawsuits pursuant to a waiver shall be filed, subject to a court asserting jurisdiction, first in Cherokee Nation courts, second in federal courts, third in state court.
 - e. Choice of law. Preference of applicable law shall be prioritized as follows: Nation law first, federal law second, and state law third.
 - f. Duration of the waiver. Waivers shall be limited to the duration of the contract.
4. Any waiver granted under this section shall not be canceled, terminated, or withdrawn except by agreement of the party entitled to the waiver.
5. A waiver conforming to the minimum "sue and be sued" requirements of the Small Business Administration for participation in the 8(a) Business Development program, 13 C.F.R. § 123.109(c)(1), as amended, is exempt from the limits of subdivision 3.

History

Source. LA 23-04, eff. June 17, 2004.

Amended. LA 16-05, eff. April 20, 2005.

Library References

Indians <KEY>405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 6. Delegation of authority as to Cherokee Nation

In addition to all provisions in 73 CNCA § 5, any waiver of the sovereign immunity of Cherokee Nation as a government shall be limited to:

1. Actual damages resulting from legislative action which has a material adverse effect on an Business Entity's ability to perform obligations to a party to a contract under the contract.
2. Any contractual obligation of an Business Entity in the event that the Nation terminates or dissolves the Business Entity or materially and unreasonably increases restrictions on the Business Entity's capacity to engage in its operations.
3. Declaratory judgment interpreting the scope and validity of a waiver.

History

Source. LA 23-04, eff. June 17, 2004.

Library References

Indians <KEY>405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 7. Delegation of authority as to Cherokee Nation business entities

The Principal Chief is authorized to grant a waiver of the sovereign immunity of Cherokee Nation Businesses or a business entity in which Cherokee Nation Businesses owns an interest, (i) to a bonding company, surety, or other guarantor for the purpose of securing a contract. Such waiver will be, in the case of Cherokee Nation Businesses, limited to its cash or cash equivalent assets or (ii) to a company in connection with a New Markets Tax Credit transaction. Such waiver will be, in the case of a business entity in which Cherokee Nation Businesses owns an interest, limited to the assets of that entity. Waivers under this section will not be subject to the limitations of 73 CNCA § 5. This section does not allow the Principal Chief to grant a waiver as to Cherokee Nation or otherwise allow recovery against Cherokee Nation, its assets, or any elected officials, officers or employees of Cherokee Nation.

History

Source. LA 12-08, eff. July 21, 2008.

Amended. LA 12-11, eff. June 24, 2011.

Library References

Indians <KEY>405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 2

CONSTITUTION CONVENTION COMMISSION

§ 101. Purpose

This act is adopted for the purpose of establishing a Constitution Convention Commission. The Commission shall oversee the conduct of a constitutional convention as called for by a vote of the Cherokee people in the 1995 election.

History

Source. LA 10-98, eff. August 26, 1998.

Library References

Indians <KEY>214.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

§ 102. Definitions

For purposes of this chapter, the following terms shall be defined as follows:

1. **"Appointed official"** shall mean officials appointed by the Principal Chief and confirmed by the Tribal Council to serve for an established or indefinite term, but shall not include officials otherwise appointed and confirmed to serve only in a temporary or interim capacity because of exigent circumstances, provided there are no apparent conflicts of interest with the appointed official's duties or responsibilities.
2. **"Campaign"** means and includes all activities for or against the election of a candidate to a specific office within Cherokee Nation by a Constitution Convention Commissioner during his or her appointed term.
3. **"Citizen of Cherokee Nation"** means a person enrolled as a citizen of Cherokee Nation pursuant to 11 CNCA § 4(J), derived only through proof of Cherokee blood based on the Final Rolls.
4. **"Constitution Commission"** means the Cherokee Nation Constitution Convention Commission established

pursuant to this statute.

5. **"Council"** means the Cherokee Nation Council.

6. **"Council Member"** means a member of the Cherokee Nation Council.

7. **"Deputy Principal Chief"** means the Deputy Principal Chief of Cherokee Nation who serves as President of the Council.

8. **"Principal Chief"** means the Principal Chief of Cherokee Nation.

9. **"Supreme Court"** means the Supreme Court of Cherokee Nation.

History

Source. LA 10-98, eff. August 26, 1998.

Amended. LA 32-00, eff. November 18, 2000.

§ 103. Cherokee Nation Constitution Convention Commission

A. Establishment and appointment. The Commission shall be called the Cherokee Nation Constitution Convention Commission. The Constitution Convention Commission shall be composed of two (2) appointees of each Branch of the Tribal Government; two (2) from the Executive, the Chief and Deputy Chief concurring; two (2) from the Supreme Court, unanimous approval by all three Justices required; and two (2) from the Tribal Council, two-thirds (2/3) vote of approval required. The six (6) appointed members shall select a seventh member. The Constitution Convention Commission shall have the sole responsibility and explicit authority for the conduct of the Constitution Convention, including activities described in subsection (D) of this section, and shall be an independent Commission in the performance of its statutory authority. In the performance of that authority it shall not be subject to direction or supervision by the Executive, Legislative or Judicial Branch of Cherokee Nation Government.

B. Term. The Constitution Convention Commission shall be appointed and take their oath of office when practical. Each Commission member shall serve a term commencing with the day of appointment, and ending six (6) months after the election on proposed amendments, alterations, revisions or a new constitution, or at the discretion of the Commission. In case of vacancy on the Commission, the Commission shall make a new appointment. A person appointed to fill a vacancy on the Constitution Convention Commission shall serve the remaining term of the vacant position.

C. Qualifications. The Commissioners shall be citizens of Cherokee Nation of high stature with excellent reputation, and have ability to comprehend basic legal issues. Elected or appointed officials of Cherokee Nation are specifically disqualified from serving on the Commission or any subcommittees created by the Commission.

D. Duties. The Constitution Convention Commission shall organize and proceed to carry out the process broadly outlined in this statute. That process will ensure citizen participation, on an equal footing, with all others. The Commission shall develop an effective and efficient method of communication with all citizens that will:

1. provide an objective assessment of the current governmental structure;
2. conduct a series of public hearings that provide citizens of each voting district an opportunity to provide both written and oral testimony before the Commission to express their views on constitutional amendments, alterations, revisions or a new constitution;
3. provide a regular progress report, a minimum of four times in a year, to the citizens and to each branch of the government;
4. upon completion of public review and comment, prepare an interim report to the Cherokee people detailing the proposed amendments, alterations, revisions or a new constitution at an at-large Constitution Convention; and
5. develop and present said final proposed amendments, alterations, revisions, or new constitution to a referendum vote by the citizens of the Cherokee Nation.

The Commission shall then work in cooperation with the Election Commission to prepare wording for said ballots for an election. The Constitution Convention Commission shall also engage in the following activities in the performance of its responsibilities:

1. Elect a Chairperson, Vice-Chairperson/Parliamentarian, and a Secretary/Treasurer from its own membership;
2. Publish a schedule for its regular meetings, establish an agenda for each meeting in accordance with Robert's Rules of Order, and approve and maintain correct and accurate minutes of its deliberations;
3. At its discretion, hire independent counsel to advise, who is neither currently employed or engaged in any manner by Cherokee Nation, or any agency or enterprise of Cherokee Nation, nor has been previously employed or engaged in any manner by Cherokee Nation or any agency or enterprise of Cherokee Nation within two (2) years prior to the enactment date of this statute;
4. Develop rules and regulations necessary to conduct the public hearings described above, provided that they shall publish and transmit such rules and regulations.
5. A minimum of three (3) members shall oversee the conduct of each of the public hearings at which citizens of Cherokee Nation will be permitted to provide written and oral testimony on their suggestions for proposed amendments, alterations, revisions, or new constitution.
6. Evaluate and determine the number and location of public hearings within the eleven (11) voting districts of Cherokee Nation. In addition, public hearings will be held in out-of-area major metropolitan centers in which a minimum of five hundred (500) citizens reside.
7. Hire support staff as the Commission deems appropriate for the conduct of business.
8. Establish a process to record and maintain a permanent record of comments taken from the citizens at the public hearings.
9. Engage in any other activities necessary for the performance of its responsibilities as required by provisions

of this chapter.

10. Establish advisory committees and seek volunteers to the Commission that may contain citizens of Cherokee Nation who are neither on the Commission, nor employed by the Nation. Provided; that no such advisory committee member or volunteer shall have any voting right on matters before the Commission.

E. Meetings. The Constitution Convention Commission shall conduct business in open meetings at a location provided by Cherokee Nation or other location designated by the Commission, provided that the Commission may go into executive session for purposes of discussing policy and procedural matters in the initial organization of the Commission or any issues regarding personnel matters. No vote shall be taken in executive session, and all votes shall be public and recorded in the official minutes of the Commission. Meeting minutes shall be prepared by the Secretary/Treasurer setting forth the Commission members present, a summary of items discussed and action taken by vote of the Commission, and said minutes shall be subject to approval of the Commission. Public notice shall be given of all meetings no less than five (5) calendar days prior to meeting date. Special meetings may be called on the written concurrence of the Chairperson, Vice-Chairperson/Parliamentarian, and Secretary/Treasurer with proper notice given.

Public notices shall be filed with the Secretary of State of Cherokee Nation and posted in the lobby by the Council chambers.

F. Quorum. Five (5) of the seven (7) Commission members shall constitute a quorum for all meetings held by the Commission.

G. Voting. Each member of the Commission may cast one (1) vote each on any given item taken to vote. A simple majority of votes cast by attending members will decide the issue. In the event of a tie, the vote shall be retaken with the Chairperson abstaining his or her vote.

H. Compensation. The Commission shall receive stipends or compensation for their services in accordance with their itemized budget as approved by the Council.

I. Immunity. All Commissioners serving on the Constitution Convention Commission shall be afforded qualified immunity from civil prosecution in the courts of Cherokee Nation for acts taken in performance of their statutory authority.

J. Removal of Commission member. Any Constitution Convention Commission member may be removed by a 5/7 vote of the Commission members under the following process:

1. Grounds for removal:

- a. Campaigning for any candidate for elected office within Cherokee Nation,
- b. Interfering with, or attempting to interfere with the orderly conduct of any public hearing on the Constitution,
- c. Committing malfeasance, misfeasance or nonfeasance of duty while in office. For purposes of removal, consecutively failing to attend three or more called meetings of the Commission, without just cause, will constitute nonfeasance of office.

2. A Commissioner removed by the Commission may seek a de novo appeal before the Supreme Court within

ten (10) days. A petition for removal of a Commissioner may be brought by a two-thirds (2/3) majority vote of the Tribal Council, a five-sevenths (5/7) majority vote of the Commission itself or, only with respect to subsections (A) and (B) of this section, a citizen's petition brought by a minimum of twenty (20) citizens which includes the sworn statements of no less than ten (10) persons who witnessed the improper activity by a Commissioner.

History

Source. LA 10-98, eff. August 26, 1998.

Library References

Indians <KEY>214.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

CHAPTER 3

CONSENT FOR LITIGATION

§ 201. Short title

This Act shall be known and may be cited as the Consent for Litigation Act of 2011.

History

Source. LA 07-01, eff. March 16, 2001.

Library References

Indians <KEY>405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 202. Purpose

The purpose for this enactment is to require Tribal Council consent prior to filing any litigation that involves the Nation's sovereignty or substantial assets.

History

Source. LA 07-01, eff. March 16, 2001.

Library References

Indians <KEY>405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 203. Definitions

For purposes of this chapter:

1. **"Cherokee Nation"** means the government of Cherokee Nation located at Tahlequah, Oklahoma.
2. **"Filing"** means the initiation of legal action in any court or regulatory body.
3. **"Litigation"** means any proceeding or suit at law.
4. **"Principal Chief"** means the Principal Chief of Cherokee Nation.
5. **"Sovereignty"** means the matters that concern the boundaries, or territory, or the jurisdiction, or treaty rights, or the powers or rights of self-governance of Cherokee Nation.
6. **"Substantial assets"** means litigation that involves an amount in controversy in excess of One Hundred Thousand Dollars (\$100,000.00).
7. **"Tribal Council"** means the Cherokee Nation Council.

History

Source. LA 07-01, eff. March 16, 2001.

§ 204. Authorization, ratification or approval of litigation

Any litigation brought on behalf of Cherokee Nation against any non-Cherokee Nation entity in any court or jurisdiction, must be authorized by the Principal Chief and ratified by the Tribal Council prior to the filing of said litigation, when said suit involves the Sovereignty of Cherokee Nation or substantial assets. If, due to exigent circumstances, litigation must be commenced or filed prior to securing ratification or approval by the Tribal Council, such ratification or approval must be granted within sixty (60) days or such litigation shall be dismissed. These requirements do not apply to routine civil or criminal litigation carried out by the Justice Department of Cherokee Nation.

History

Source. LA 07-01, eff. March 16, 2001.

Library References

Indians <KEY>405.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

CHAPTER 4

CHEROKEE NATION TREATY, COMPACT AND AGREEMENT ACT

§ 301. Short title

This legislative act shall be known and may be cited as the Cherokee Nation Treaty, Compact and Agreement Act.

History

Source. LA 15-01, eff. May 29, 2001.

§ 302. Purpose

The purpose of this Act is to grant to the Principal Chief of the Cherokee Nation the authority to execute treaties, compacts, memorandums of understanding, contracts, and other agreements on behalf of Cherokee Nation between governments, state agencies or other entities; with said approval to be subject to ratification through a majority vote of the Cherokee Nation Tribal Council.

History

Source. LA 15-01, eff. May 29, 2001.

Library References

Indians <KEY>121, 142(1), 210, 216.

Westlaw Topic No. 209.

C.J.S. Indians §§ 5, 11, 37 to 38, 40, 57 to 59, 66 to 72.

§ 303. Definitions

For the purposes of this chapter:

1. **"Cherokee Nation"** means Cherokee Nation, located in Tahlequah, Oklahoma.
2. **"Compact"** means an agreement usually applied to agreements between nations or sovereign states.
3. **"Comprehensive budget"** means the incomes and expenditures as estimated, balanced, and approved by the Cherokee Nation Tribal Council.

4. **"Contract"** means a promissory agreement, to do or abstain from doing some act, in exchange for sufficient consideration, between two or more parties that creates, modifies or destroys some legal relation.
5. **"Credit of Cherokee Nation"** means obligation of tribal funds, property resources in which Cherokee Nation has an interest.
6. **"Memorandum of Understanding"** means a written document embodying the terms of an agreement that the parties desire to fix by an informal written document, which will serve as the basis for a future formal contract.
7. **"Principal Chief"** means the duly elected and confirmed Principal Chief, Executive Officer of the Cherokee Nation.
8. **"Property of Cherokee Nation"** means real estate owned or sought to be purchased by Cherokee Nation.
9. **"Rights or privileges"** means liberty, property, monetary, constitutional or legal interest held by citizens of Cherokee Nation.
10. **"Sovereignty"** means the matters that concern the boundaries, or territory, or the jurisdiction, or treaty rights, or the powers or the rights of self-governance of Cherokee Nation.
11. **"Substantial assets"** means litigation that involves an amount in controversy in excess of Twenty-Five Thousand Dollars (\$25,000.00).
12. **"Treaty"** means a compact made between Cherokee Nation and one or more other independent nations or tribes, which if properly authorized and ratified becomes law.
13. **"Tribal Council"** means the duly elected and confirmed person(s) of the Legislative Branch of Cherokee Nation.

History

Source. LA 15-01, eff. May 29, 2001.

§ 304. Authority, procedure, and approval of contracts, compacts and other agreements

A. The Principal Chief shall have the authority to execute treaties, compacts, memorandums of understanding, contracts, and other agreements on behalf of Cherokee Nation between governments, state agencies or other entities regarding the sovereign immunity of Cherokee Nation, substantial assets or credit of Cherokee Nation, or where real property of Cherokee Nation is involved, or where significant rights and privileges of the Cherokee people are involved, such agreements shall be subject to ratification by majority vote of the Cherokee Nation Tribal Council, as provided herein, before they are effective.

B. The above-described contract, compact or other agreement, executed by the Principal Chief on behalf of Cherokee Nation shall be submitted to the Cherokee Nation Tribal Council for a vote on ratification at the next regularly scheduled meeting or special session of the Tribal Council after execution of said agreement by the Principal Chief.

C. Upon receipt of said agreement by the Tribal Council from the Principal Chief, the Tribal Council shall include the vote on ratification in the agenda for the next regularly scheduled meeting or special session as provided by the Tribal Council Rules of Procedure.

D. The provisions of this act shall not apply to agreements necessary to carry out the functions of government as set forth in the annual comprehensive budget approved by the Tribal Council in each fiscal year.

History

Source. LA 15-01, eff. May 29, 2001.

Library References

Indians <KEY>121, 142(1), 210, 216.

Westlaw Topic No. 209.

C.J.S. Indians §§ 5, 11, 37 to 38, 40, 57 to 59, 66 to 72.