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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Chuck Hoskin, Jr., Cherokee Nation Tribal Council

Opinion Number: 2013-CNAG-02

Date Decided: April 12, 2013

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

1. Is it permissible under Cherokee Nation law for candidates seeking elective office to retain the services of professional campaign firms to assist in the management of each candidate's campaign?

As we understand the factual basis for your question, you, and an undisclosed number of other candidates in the 2013 Tribal Council elections, have retained the services of LockSher Logic, LLC to assist in the management of each candidate's campaign. Such services include, but are not limited to, polling, fundraising, and developing and executing campaign strategy.

ANSWER AND ANALYSIS

The Cherokee Nation Election Code (the "Election Code"), in its current incarnation, is codified at Title 26 of the Cherokee Nation Code Annotated and was enacted pursuant to Legislative Act 46-12 which was passed by the Tribal Council on December 10, 2012 and subsequently signed into law by Principal Chief Bill John Baker. The Election Code is the controlling law for the conduct of all Cherokee Nation elections for any elective office, Constitutional amendments, initiatives and referenda of the Cherokee Nation. 26 CNCA § 1.

**THERE IS NOTHING IN CHEROKEE NATION LAW PROHIBITING CANDIDATES
FROM UTILIZING THE SERVICES OF PROFESSIONAL CAMPAIGN FIRMS.**

Title 26, Sections 41 – 47 of the Cherokee Nation Code governs the collection, use and disclosure of campaign finances. “Campaign contribution” means a contribution in money or services to a candidate offered or given with the intent that it be used in connection with a campaign. 26 CNCA § 41(A). “Campaign expenditure” means an expenditure of money or services incurred by any person in connection with a campaign. 26 CNCA § 41(B).

26 CNCA § 44 provides that campaign contributions may only be received during the period of time spanning six (6) months immediately preceding the date of the primary or special election and six (6) months immediately following the primary or special election date. Campaign contributions may only be used for purposes connected with the performance of duties or activities related to the campaign for elective office and any leftover contributions will be placed in an escrow account to defray the cost of subsequent Cherokee Nation elections. *Id.* Campaign contributions may only be made by individual natural persons; corporations, partnerships and/or political interest groups are specifically prohibited from contributing to any campaign or candidate. 26 CNCA § 43. Individuals are limited to contributing an amount not to exceed five thousand dollars (\$5000) to any one candidate during an election period, and no contributions may be made or authorized in the name of another person or on behalf of a minor. *Id.* Further, no campaign contributions may be directly or indirectly reimbursed by any person. *Id.* This section further provides that every person making a campaign contribution shall provide their name, address, telephone number, type of employment and employers name with every campaign contribution made. *Id.*

The Election Code further allows candidates to utilize “financial agents” as part of their campaigns. 26 CNCA § 42. A “Financial agent” is defined as the “person or persons designated and authorized by a candidate to accept contributions and pay obligations related to the candidate’s campaign...” 26 CNCA § 41¹. No later than the filing date for an election, each candidate is mandated to file a statement of designation with the Election Commission, containing the names and addresses of every person authorized as the candidate’s financial agent, or a statement that the candidate has no authorized financial agent. 26 CNCA § 42. A candidate may amend the designation any time prior to the opening of the polls on the day set for the election. *Id.*

Financial agents are authorized to receive campaign contributions in accordance with the time frame set forth above and must transmit to the Election Commission the requisite contributor information as required by law. 26 CNCA § 44. Financial agents are subject to the same prohibitions against personal use of campaign contributions, intimidation in the procurement of said contributions and soliciting contributions from Cherokee Nation employees as a result of reward or threat of reprisal related to making a contribution. *Id.* Candidates and their financial agents are prohibited from accepting anonymous contributions exceeding one thousand dollars in

¹ It is important to note that the ability of a candidate to utilize a “financial agent” is not a recent development in Cherokee Nation election law. The Cherokee Nation Election Code specifically provided for the use of “financial agents” at least as early as 1997. *See e.g.*, LA 07-97.

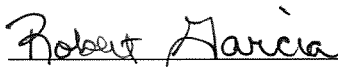
aggregate. *Id.* Candidates and financial agents are also required to provide proper records and receipts of campaign expenditures. *Id.* Candidates and financial agents are subject to possible criminal sanctions or civil liability for violations of campaign contribution and expenditure requirements and prohibitions. 26 CNCA § 45.

Monthly financial disclosure reports detailing campaign contributions, expenditures, and any donated radio or television time, must be filed with the Election Commission. 26 CNCA §§ 46, 47. While candidates are charged with filing a certified monthly financial disclosure report with the Election Commission, a candidate's financial agent may certify the monthly report. *Id.* However, the final financial disclosure report may be certified and filed by either the candidate or his or her financial agent in accordance with the law. 26 CNCA § 46.


It is clear from the preceding paragraphs that the utilization of professional campaign firms as financial agents is not only unprohibited under Cherokee Nation law, but that the Election Code anticipates and endorses the use of financial agents. That being said, any professional campaign firm chosen and authorized by a candidate to receive campaign contributions and make campaign expenditures on the candidate's behalf should be designated to the Election Commission as a "financial agent" pursuant to 26 CNCA § 42. Care must be taken to ensure that a candidate's financial agents comply with the various regulations regarding campaign contributions, expenditures, record keeping and disclosure as discussed above.

IT IS, THEREFORE, THE OFFICIAL OPINION OF THE ATTORNEY GENERAL THAT:

1. Candidates for elective office may retain the services of professional campaign firms to assist the candidate in the management of his or her campaign; provided that any professional campaign firm authorized to accept campaign contributions and make campaign expenditures on a candidate's behalf must be designated as a "financial agent" to the Election Commission and must comply with the various regulations regarding campaign contributions, expenditures, record keeping and disclosure as set forth in the Election Code.



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