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**CHEROKEE NATION**  
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**M. Todd Hembree**  
Attorney General

**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Cherokee Nation Tribal Councilor David Walkingstick  
**Opinion Number:** 2017-CNAG-01  
**Date Decided:** January 10, 2017

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

[Does] Steve Bruner's involvement with Kialegee Tribal Town attempting to open the Red Creek Dance Hall/Restaurant/Casino with Class II gaming on his allotment next to the creek turnpike , [sic] which will compete with our market shares at CNB, will be a conflict of interest with his wife Kalaen [sic] Free's employment/contract with Cherokee Nation Business and other subsidiaries of Cherokee Nation?

You have asked, in essence, whether the spouse of an independent contractor is prohibited from owning a business that competes with a business owned by Cherokee Nation.

**CHEROKEE LAW ON CONFLICT OF INTEREST**

***1. Cherokee Nation Constitution***

The Cherokee Nation Constitution states:

No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits or gratuity, other than wages, salary, per diem, or expenses specifically provided by law.

Article X Section 10.

This office opined in 2009-CNAG-01, accompanied by a subsequent long line of informal opinions, that this provision of the Constitution does not prohibit the spouse of an elected official (or employee) from doing business with Cherokee Nation so long as the official or employee has no ownership interest in the business. However, the current question is whether there is a conflict when a business owned by the spouse of an employee<sup>1</sup> competes with a business owned by the Cherokee Nation. This is a question of first impression that has not been addressed by the Office of the Attorney General, the Courts of the Cherokee Nation or the Tribal Council.

There is nothing in the Constitution that would prohibit the spouse of an employee from owning a business that competes with Cherokee Nation. Next we turn to Cherokee Nation statutes to determine whether a conflict exists.

## *2. Cherokee Nation Ethics Act*

### A. Prohibited Actions

In 2012, Cherokee Nation Tribal Council passed the “Cherokee Nation Ethics Act of 2012.” That Act repealed all previous ethics acts and amendments and is the statute under which we analyze the question before us. Because this Act does not include a separate definition of “employee” and is a continuation of limits contained in Article X, Section 10 of the Constitution, it is correct to include “any person employed in any capacity” as an employee under this Act. Therefore, the Chief’s independent legal counsel is an employee for the purpose of this Act. So the question then becomes whether anything in this Act would prohibit the spouse of an

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<sup>1</sup> The Chief’s independent legal counsel is an independent contractor and not typically considered an “employee” for legal purposes; however, this Constitutional provision includes “any person employed in any capacity” by the Nation or its entities. For the purpose of Constitutional analysis regarding conflict of interest, an independent contractor of the Nation is considered an employee.

employee from owning a business that competes with a Cherokee Nation business. The current Ethics Act prohibits certain solicitation of business, certain sales of property and involvement in business decisions. There is nothing in the Act that prohibits an employee or a spouse of an employee from owning and operating a business that competes with a business owned by the Cherokee Nation.

B. Resolution of Conflict Issues Not Defined by Statute

The Ethics Act, 28 C.N.C.A. § 13 states:

In situations not defined by statute any question of whether or not a conflict exists with regard to an employee shall be made pursuant to the written policies and procedures of each entity. Such determination shall be in writing and shall be made open and available to the public upon request. Should any question arise as to conflict the affected employee must seek a determination as designated in the employer's policy and procedure.

Therefore, because ownership of a competing business by an employee (or their spouse) is not prohibited by the Constitution or statute, the only way that Cherokee Nation could prohibit an employee (or their spouse) from owning and operating a business that competes with a business owned by the Cherokee Nation is through Human Resources Policy and Procedure or through contractual language with an Independent Contractor.

The Cherokee Nation Human Resources Policy and Procedure, Employee Conduct, Code of Ethics Section III (A) has similar language to the Constitution and Ethics Act and only places limits on ownership interests in businesses that do business with Cherokee Nation, not businesses that may compete with Cherokee Nation. Certainly, employees have a duty to “never use any information gained confidentially in the performance of tribal duties as a means of making private profits to the detriment of the Cherokee Nation.” However, as an attorney, Chief’s legal counsel has an even higher ethical standard to her client under the Oklahoma Rules of Professional Conduct. 5 O.S. Appendix 3A. There is no perceived or actual conflict simply

because the spouse of an attorney may potentially own and operate a business that may compete with the attorney's client.


The final prohibition on a spouse of an independent contractor owning a business that competes with Cherokee Nation could be found in the contract which employs the independent contractor. A review of the contract<sup>2</sup> of the Chief's independent counsel reveals no prohibition on counsel's spouse owning a business that may eventually compete with Cherokee Nation.

Finally, the only Cherokee Nation law that mentions independent counsel for the Chief (and the Tribal Council) is 51 C.N.C.A § 111, the Attorney General Act, which states:

Nothing herein shall prevent the Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

#### CONCLUSION

There is nothing in the Cherokee Nation Constitution, statutes, policies, or the specific contract in question that would prohibit the spouse of an independent contractor from owning and/or operating a business that competes with a business owned by the Cherokee Nation.



M. Todd Hembree  
Attorney General

Chrissi Ross Nimmo  
Senior Assistant Attorney General

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<sup>2</sup> This contract has been subject to multiple FOIA and GRA requests and is a public record and contains provisions similar to many other professional services contracts.