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**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Jodie Fishinghawk, Council Person, Cherokee Nation Tribal Council

**Opinion Number:** 2009-CNAG-01

**Date Decided:** April 1, 2009

To: Jodie Fishinghawk- Tribal Councilperson  
Cherokee Nation

Melanie Knight, Secretary of State  
Cherokee Nation

From: A. Diane Hammons, Attorney General  
Cherokee Nation

This office has received your request for an Attorney General's Opinion asking, in effect, the following questions:

**First Question:**

Does the "Sunshine Ethics Act of 2007" 28 C.N.C.A. § 1 et seq., unconstitutionally permit Councilors to receive an "interest, profit, benefits or gratuity" from an "individual, partnership, corporation or entity doing business with Cherokee Nation directly or indirectly?"

## Answer and Analysis

Article X Section 10 of the 1999 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.”

Under Cherokee Nation law, the Constitution is interpreted to “give effect to the intent of its framers and the people adopting it”<sup>1</sup> This intent is derived by first looking to the plain language of the law.<sup>2</sup> After careful examination of the language in Article X § 10 of the 1999 Constitution, this office has determined that the phrase “directly or indirectly” modifies the phrase “doing business with Cherokee Nation.”<sup>3</sup> This conclusion was reached by looking at the plain language of the Constitutional provision. The phrase “directly or indirectly” immediately follows the phrase “doing business with Cherokee Nation” and is not separated by any punctuation marks. Conversely, the phrase “directly or indirectly” is separated from the word “receive” by thirteen words. If the framers had intended “directly or indirectly” to apply to

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<sup>1</sup> *DeMoss v. Jones*, JAT 96-01

<sup>2</sup> See *Allen v. Cherokee Nation Tribal Council*, JAT 04-09 “When interpreting legislation or constitutional provisions, this Court must look at the plain language of the document. If this Court can reach its conclusion by looking at the plain language alone, there is no need to look to additional sources. The language should speak for itself.” See also *DeMoss*, JAT 96-01 “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 and acts of the legislature. Thus, it is a well settled rule, and one said to be in accord with obvious good sense, that words appearing in a constitution are presumed to have been used according to their ordinary, plain, natural and usual signification and import.” (emphasis in original) (*Quoting* 16 Am Jur 2d Constitutional Law § 71.)

<sup>3</sup> The Constitutional provision in question was added by the 1976 Constitution. This office has been unable to find any discussion of the framers intent during the 1976 Constitutional Convention. This provision was discussed and changed during the 1999 Constitutional Convention. A comma was removed from the paragraph. However, after reading the transcript from the 1999 Constitutional Convention, there in no discussion of the clause “directly or indirectly.” The consensus of the 1999 Constitutional Convention was that Council Members could only receive “wages, salary, per diem or expenses” when a specific law allowed them to do so. See 1999 Constitutional Convention transcript, discussion of Article 10, Section 10.

“receive,” those words (“directly or indirectly”) would have modified the term “received,” by direct placement immediately preceding or following it.

Therefore, it is the Opinion of the Office of the Attorney General that Article X Section 10 of the 1999 Constitution prohibits Council Members from receiving any interest from any business that is directly or indirectly doing business with Cherokee Nation. For example, a Council Member could not have an ownership interest in a general contracting business that contracted with Cherokee Nation, because the general contractor would be doing business “directly” with Cherokee Nation. Further, a Council Member could not have an ownership interest in a sub-contracting business because the sub-contractor would be doing business “indirectly” with Cherokee Nation.

However, the Constitutional provision does allow a Council Member to receive “wages, salary, per diem or expenses specifically provided by law” from entities who are directly or indirectly doing business with the Cherokee Nation. Therefore, the Tribal Council may, by passing legislation, establish under what circumstances Council Members may receive “wages, salary, per diem or expenses.”

The Tribal Council “specifically provided by law” the circumstances under which a Tribal Council member can receive “wages, salary, per diem or expenses” from an entity “doing business with Cherokee Nation” when it passed the Sunshine Ethics Law of 2007. The issue is whether the Sunshine Ethics Law exceeded the bounds of the Constitution when it allowed Council Members to receive an “interest, profit, benefits or gratuity” instead of only those “wages, salary, per diem or expenses specifically provided by law.”

The Sunshine Ethics Act of 2007 states (in parts relevant to this opinion) that an “official that does business with . . . Cherokee Nation . . . shall file a written statement with the Secretary of State.” (28 C.N.C.A. § 10). It further states that where “an official or their immediate family

member has an ownership interest in a business” doing business with Cherokee Nation, no conflict will exist if certain conditions are met. (28 C.N.C.A. § 11). The Sunshine Ethics Act specifically allows a Council Member to receive or have an “interest” in a business that is doing business with Cherokee Nation, and that legislative provision is contrary to the Constitution. The Constitution provides that a Council Member can be employed by an entity doing business with Cherokee Nation (because there is an allowance for wages and salary), and it is also clear that a Council Member may not own, wholly or partially, an entity that is doing business with Cherokee Nation.

Therefore, the Sunshine Ethics Act is unconstitutional to the extent that it allows a Council Member to have an “ownership interest” in an entity “doing business with Cherokee Nation.

**Second Question:**

“[D]oes the term “indirectly,” located in Article X Section 10 of the 1999 Constitution, prohibit spouses of Tribal Council members from having an ownership interest in entities doing business with Cherokee Nation?”

**Answer and Analysis**

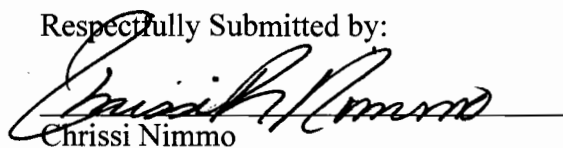
As discussed above, because the term “indirectly” has been interpreted to apply to the phrase “doing business with” instead of the phrase “receive from any . . . entity,” Article X Section 10 of the 1999 Constitution does not prohibit the spouses of Tribal Council members from receiving any “interest, profit, benefits or gratuity” from an entity doing business with Cherokee Nation. Article X Section 10 of the 1999 Constitution specifically limits this exclusion to individuals connected to Cherokee Nation by stating “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” can receive an interest from a business doing

business with Cherokee Nation. There is no indication, from either the plain language of the text or the transcripts from the Constitutional Convention, that this provision was intended to extend to the spouse or immediate family of individuals associated with Cherokee Nation. Therefore, spouses of Tribal Council members are not prohibited from having an ownership interest in an entity that is directly or indirectly doing business with Cherokee Nation.

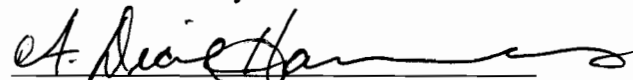
**Conclusion:**

Because Article X Section 10 of the 1999 Constitution prohibits Tribal Council members from receiving “any interest, profit, benefits or gratuity” from an “entity doing business with the Cherokee Nation directly or indirectly,” the Sunshine Ethics Act of 2007 is unconstitutional to the extent that it allows a Council Member the have an “ownership interest” in an entity “doing business with Cherokee Nation”. Further, because the Constitution only places this limit on an “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,” the spouses of Tribal Council members are not prohibited from receiving any “interest, profit, benefits or gratuity” from an entity doing business with Cherokee Nation. To the extent that the prior informal memorandum from Cherokee Nation Department of Justice, dated March 13, 2002, titled “*Application of Art. X § X to: contracts with CN employee’s spouses*,” is inconsistent with this opinion, it is set aside.

Respectfully Submitted by:

  
Chrissi Nimmo

Assistant Attorney General



A. DIANE HAMMONS

Attorney General for the Cherokee Nation