

CHEROKEE NATION
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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Harvey Chaffin, Attorney for the Cherokee Nation Election Commission, on behalf of the Election Commission

Opinion Number: 2015-CNAG- 5

Date Decided: June 22, 2015

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

- 1. May the Election Commission accept the return of absentee ballots by personal delivery on additional days beyond those specifically provided by the Election Code?**
- 2. May the Election Commission accept the return of absentee ballots by personal delivery on election day?**

As we understand the factual basis for your question, the Cherokee Nation Election Code sets forth a period of time for personal delivery of absentee ballots to the Commission, but does not specifically reference whether the Commission may grant additional days beyond those listed in the Code. The Code is also unclear whether election day is included in the period of time for personal delivery of absentee ballots to the Commission.

SHORT ANSWERS:

We answer both questions in the affirmative.

Background

The Cherokee Nation Election Code (the "Election Code"), in its current incarnation, is codified at Title 26 of the Cherokee Nation Code and was enacted pursuant to Legislative Act 04-14, which was passed by the Tribal Council on February 10, 2014 and subsequently signed into law by the Principal Chief. 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.

Section 11 of the Election Code sets forth the qualifications, authority and duties of the Election Commission. Section 78 of the Election Code governs the return of absentee ballots to the Commission.

ANALYSIS AND DISCUSSION

A. The Commission may accept the personal delivery of absentee ballots for additional days beyond those provided by 26 CNCA § 78.

In responding to your questions, we must examine the Cherokee Constitution and the Cherokee Nation Election Code. The Election Commission is an autonomous and permanent entity tasked with the administration of all Cherokee Nation elections in accordance with election laws as enacted by the Tribal Council. *Cherokee Nation Constitution*, Article IX, Section 1. The Election Commission shall conduct all general and special elections and has a number of duties enumerated in the Code. 26 CNCA § 11(C). The Commission shall develop rules and regulations necessary to carry out Cherokee Nation elections and engage "in any other activities for the performance of its responsibilities..." *Id.*

The Election Code mandates that personal delivery of absentee ballots to the Commission "shall be accepted from the Wednesday prior to election day until election day..." during the hours of 7:00 a.m. to 7:00 p.m. 26 CNCA § 78. This section sets forth the mandatory time period for the Commission to accept personal delivery of absentee ballots. There is nothing in the Election Code which specifically prohibits the Commission from accepting personal delivery of absentee ballots on additional days beyond those set forth in Section 78. In fact, it is consistent with the authority and responsibility granted to the Commission to allow additional days for the personal delivery of absentee ballots. *See* 26 CNCA § 11(C). It is also consistent with the spirit and intent of the Election Code to provide Cherokee voters with as many opportunities to cast a ballot as is feasible. As such, the period of time specifically set forth in 26 CNCA § 78 for personal delivery of absentee ballots to the Commission is a minimum period of time and the Commission may establish additional dates and times for accepting such ballots.

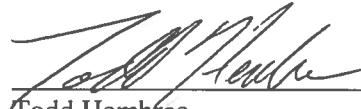
B. The Election Commission must accept personal delivery of otherwise valid absentee ballots on election day, at least between 7:00 a.m. to 7:00 p.m.

As previously noted, 26 CNCA § 78 mandates that personal delivery of absentee ballots to the Commission "shall be accepted from the Wednesday prior to election day until election day..." This Section further provides that the absentee ballots must be delivered personally "between the hours of 7:00 a.m. to 7:00 p.m. *during those four days.*" 26 CNCA § 78 (emphasis added). As noted above, the period of time for personal delivery of absentee ballots to the Commission set forth in Section 78 is the statutory minimum and the plain language of the statute demonstrates that election day is one of "those four days" of the minimum period. As such, the Commission must accept personal delivery of otherwise valid absentee ballots on election day, at least between 7:00 a.m. and 7:00 p.m.

Conclusion

It is therefore the Official Opinion of the Attorney General:

1. **That the four day period specified in 26 CNCA § 78 for personal delivery of absentee ballots is a minimum period of time and the Election Commission may establish additional dates and times for accepting such ballots.**
2. **That the Election Commission must accept personal delivery of otherwise valid absentee ballots on election day, at least between 7:00 a.m. to 7:00 p.m.**



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