



**CHEROKEE NATION**  
**OFFICE OF THE ATTORNEY GENERAL**

**P.O. Box 948**  
**Tahlequah, OK 74465-0948**  
**918-453-5000**

**Todd Hembree**  
**Attorney General**

**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

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

**Opinion Number:** 2015-CNAG-01

**Date decided:** February 26, 2015

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

**1. What is the proper procedure regarding campaign finance accounting for multi-candidate campaign materials for joint candidates for Executive office and for a “slate” of candidates for both Executive office and Legislative office; e.g. campaign signs that contain the names of more than one candidate for elective office.**

As we understand the factual basis for your question, the Cherokee Nation Election Code sets forth the statutory requirements for the disclosure of campaign finances in 26 CNCA, Chapter 5, §§ 41-47, but does not specifically reference how to treat multi-candidate campaign materials.

**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.

The Cherokee Nation Election Code, 26 CNCA § 1, *et seq.*, contains a number of sections regarding the collection, use and disclosure of campaign funds. Section 41 defines “campaign contribution” to mean a contribution in money or services offered or given with the intent that it be used in connection with a campaign. “Campaign expenditure” is defined to mean an expenditure of money or services in connection with a campaign for elective office or on behalf of a ballot measure. This Section also describes “in-kind contribution” as a campaign contribution of goods or services rather than a money donation.

Section 43 mandates that only individual natural persons may contribute to campaigns and that those contributions are limited to \$5000 in cash or in-kind contributions. Section 44 prohibits any personal use of campaign contributions and mandates that left over contributions be placed in an escrow account to be used for

costs of subsequent elections.<sup>1</sup> This Section further limits anonymous contributions to \$1000 in the aggregate to any one candidate per election period. Section 45 makes it a criminal offense for any Indian to violate any provision of Sections 43 and 44 and may result in the disqualification of an elective candidate.

Sections 46 and 47 detail the use of financial disclosure reports which must be submitted monthly to the Election Commission and a final report to be submitted at least five days prior to the swearing in of the successful candidates. The disclosure reports shall certify all contributions and expenditures for each reporting period and any candidate or candidate's financial agent who knowingly fails to fully disclose the required information is guilty of a crime and any such person convicted of such a crime is barred from holding elective office with the Cherokee Nation for five years and may be subject to removal if already elected and sworn into office.

## ANALYSIS AND DISCUSSION

### **A. Introduction**

In responding to your question, we must examine the Cherokee Nation Election Code. The Election Commission has the primary jurisdiction to “[i]nvestigate and audit all financial reports and disclosures required” by the Election Code. 26 CNCA § 11(C)(12)(F). Thus, this Office would typically defer to the Election Commission’s interpretation for those areas of the Election Code. However, when an official opinion is requested of this Office pursuant to the Attorney General Act, LA 12-07, this Office shall opine as to such a question of law and said opinion “shall have the force of law in the Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation court...” LA 12-07, codified at 51 CNC § 104(B)(4).

With respect to interpretation of the Election Code, several principles of statutory construction are relevant to your inquiry. The first being that ascertaining and effectuating legislative intent should be done whenever possible. Next, statutes should be given a reasonable and practical construction that is consistent with the purpose and policy stated in the statute. Finally, because the Election Code section in question may attach criminal penalties to any violation thereof, the statute must be narrowly construed.

While some other jurisdictions have addressed similar questions, this appears to be an issue of first impression in Cherokee Nation jurisprudence. A thorough review of the Election Code does not reveal any prohibition on candidates running as a “ticket” or “team” in joint candidacy. Nor is there any express prohibition on “slate” candidacy. Any such prohibition, were it to appear in the Election Code, would be of questionable constitutionality as it would burden candidates' rights of free speech and free association. There is also nothing in the Election Code which would prohibit one candidate from making a contribution to another candidate's campaign, notwithstanding that any such contribution would have to be made by the individual candidate (not the candidate's campaign or any such committee or group) and would be subject to the \$5000 limitation on cash or in-kind contributions.

### **B. Joint Campaigns for Principal Chief and Deputy Chief**

As previously noted, there is no express prohibition against joint campaigns in the Cherokee Nation. While candidates for Principal Chief and Deputy Chief appear on separate ballots in Cherokee Nation elections, Chief and Deputy Chief candidates have historically run as a “ticket” in the general election. Had the Tribal Council intended to prohibit this practice, one would expect specific language to this effect to appear in the Election Code, although such a prohibition would be of questionable constitutionality.

In fact, it is quite logical that candidates for Principal Chief and Deputy Chief would run as joint candidates. These are the two highest elective offices of the Executive Branch of the Cherokee Nation government. The nature and duties of these offices are so intertwined that close teamwork and cooperation between the office-holders is required on a daily basis.

---

<sup>1</sup> There is concern that provisions for the turnover of unused campaign funds may constitute an unconstitutional taking of private property for public use without just compensation as prohibited by Article III, Section 3 of the Cherokee Nation Constitution, but that Question is not currently before this Office.

The real question in this analysis is if a single candidate bears the entire cost of joint campaign materials, does that constitute a contribution to the second candidate's campaign? The definition of in-kind contribution means any campaign contribution of a good or service rather than a money donation. *See* 26 CNCA § 41(G). Campaign contribution includes a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *See* 26 CNCA § 41(A). Campaign expenditure includes an expenditure of money or services incurred in connection with a campaign for elective office. *See* 26 CNCA § 41(B). While there are limitations on the amount of campaign contributions that a candidate may accept, there are no corresponding limitations on campaign expenditures. *See* 26 CNCA §§ 43, 44.

A joint campaign could not occur without the knowledge and consent of each candidate; if it were to happen without consent then one candidate could be held liable for fraudulently appropriating the other candidate's name. For true joint candidates, there is virtually no distinction between their campaigns. While it could be said that the purchase of joint campaign materials by only one candidate primarily serves the purpose of promoting the purchaser's campaign, it is at least partially motivated by the desire to also promote the purchaser's running mate. However, promoting the joint interests of the "ticket" or "team" is secondary to the purchaser's main goal: to promote his own election to office. As such, the purchase of joint campaign materials by only one candidate would constitute campaign expenditures for the purchaser and would have to be accounted for accordingly. In such a situation the full amount of the cost for the joint campaign materials would have to be listed as an expenditure on the purchaser's Financial Disclosure Report (FDR). An attempt to further classify the purchase of joint campaign materials as a campaign contribution would have the practical effect of limiting the purchaser's ability to make campaign expenditures, which is contrary to the Election Code and is of dubious constitutionality.<sup>2</sup>

### **C. "Slate" Campaigns for Executive Office and Legislative**

As noted above, there is no prohibition on "slate" candidacy in the Cherokee Nation. There is also no prohibition on the purchase and use of "slate" campaign materials. Like joint campaign materials for Executive office, "slate" campaign materials serve to promote each candidate in part and the "slate" as a whole, so it makes logical sense that "slate" candidates might share the associated costs of said materials. However, a distinction arises when dealing with "slate" campaigns versus joint campaigns. "Slate" campaigns generally involve a mix of candidates who are seeking Executive office and candidates who are seeking Legislative office. These are separate and distinct branches of government and run on separate election cycles.<sup>3</sup> The nature and duties of these separate branches are not such that they require the same close teamwork and coordination as those in a single branch. Thus, while it is possible for a "slate" of candidates to associate as such, it would be impossible for an entire "slate" to run as co-candidates in a joint campaign.

As noted above, the purchase of "slate" campaign materials would serve the primary function of promoting the purchaser's candidacy, but would also promote the candidacies of the other "slate" members. However, because "slate" candidacy is not so closely intertwined as that of joint candidacy, financial accounting must be approached differently. In this instance, it is clear that the purchase of "slate" campaign materials provides benefits to all candidates, irrespective of the elective office each seeks. As such, the purchase of "slate" campaign materials would have to be approached in one of two ways.

First, the purchasing candidate could be responsible for the full cost of the "slate" campaign materials and would reflect the expenditure in full as part of the purchaser's FDR. In this instance, the remaining "slate" members would have to report an evenly apportioned in-kind contribution from the purchaser for the benefit received from the "slate" campaign materials. The purchaser would have to be listed personally as the contributor, as only individual natural persons may be contributors in Cherokee Nation elections. The amount of the "slate" campaign materials apportioned to the other candidates made by a purchasing candidate would

---

<sup>2</sup> This Opinion does not address whether candidates for Legislative office could effectively run as a "ticket" or "team" or how any such joint campaign materials would have to be accounted for.

<sup>3</sup> Tribal Council elections take place on a staggered basis, with approximately half of the seats coming up for election every two years. Executive office elections are on a fixed schedule, taking place every four years.

need to be made with personal funds and not from contributed campaign funds; otherwise, it would be in violation of 26 CNC § 44, which prohibits personal use of campaign funds. The purchasing candidate would be limited to \$5000 cash or in-kind contributions to the remaining “slate” candidates during the election period.

Alternatively, the costs of “slate” campaign materials could be apportioned equally between the candidates making up the “slate.” When the costs are so allocated, no single candidate is making a “contribution” to the other. As such, each candidate would be responsible for paying their share of the total costs and reflecting the expenditures on his or her Financial Disclosure Report as appropriate.

It should be noted that these contribution/expense accounting methods are not mutually exclusive and could both be used in a single campaign. A single “slate” candidate could contribute up to \$5000 in cash or in-kind contributions to their other “slate” candidates during a single campaign and then the remaining joint campaign materials could be purchased utilizing an equal allocation of costs. The same reporting as noted above would be required to properly document this activity on the candidates' Financial Disclosure Reports.

### **Conclusion**

It is therefore the Official Opinion of the Attorney General:

1.

**That joint campaign expenses for the offices of Principal Chief and Deputy Chief do not constitute campaign contributions when (1) the parties have publicly declared themselves to be co-candidates and are running as a “ticket” or “team”; and (2) there is no suggestion of dishonesty.**

2.

**That “slate” campaign expenses constitute campaign contributions and must be properly accounted for by each individual candidate’s Financial Disclosure Reports.**

Respectfully Submitted by:



Robert Garcia

Assistant Attorney General



Todd Hembree

Attorney General

Cherokee Nation