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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Meredith Frailey, Cherokee Nation Tribal Council Member

Opinion Number: 2012-CNAG-06

Date Decided: August 23, 2012

This office has been asked for an opinion answering the following:

Question 1: Whether it is a violation of the Cherokee Nation Arts and Craft Act of 2007 (LA-19-07) for CNE to require a seller (artist) to sell the copyrights for art during the initial purchase of said art.

Question 2: If it is a violation, whether there is a remedy to prevent this.

For the reasons below, we believe that the inclusion of the copyright of the art in the initial purchase is a violation of the Cherokee Nation Arts and Craft Act of 2007 but there is presently no private right of action to remedy this violation.

BACKGROUND

It is our understanding that the facts are as follows: CNE purchases art from Cherokee artists. During the purchase, an Artwork Bill of Sale is executed. Several artists have voiced concern regarding the inclusion of the copyright to the art in the Artwork Bill of Sale for the initial purchase of the art. The artists are concerned that if they request that the language be removed, the art (and/or future art) will not be purchased.

ANALYSIS

Article VI, Section 7 of the Cherokee Nation Constitution gives the Tribal Council "the power to establish laws which it shall deem necessary and proper for the good of the Nation." Legislative Act 19-07 is such a law. The purpose of this act is "to prevent the purchase of copyrights of works of Art by the Cherokee Nation or its entities in the initial purchase of the work of Art." The Act provides that "[i]n the event Cherokee Nation or its affiliated entities

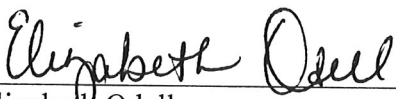
request bids for arts and crafts or solicit for the purchase of art and crafts the purchase of copyrights of the item is prohibited in the initial sale.” LA-19-07 (eff. June 15, 2007). The act is clear that the purchase of copyrights of the item of art is prohibited during the initial sale. Therefore, CNE cannot include the copyrights to the item being purchased in the Bill of Sale for the initial sale.

Inclusion of the copyright in the initial sale of art is a violation of LA-19-07 but that act does not include a private right of action. As stated above, the act prevents the purchase of the copyright of art during the initial sale but provides no remedy if that in fact happens or is required. The artist/seller can inform CNE that the language should not be included in the Bill of Sale but cannot individually initiate action to enforce this provision.

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

- 1. Inclusion of the copyright to an item in the Bill of Sale for the initial purchase of said item is a violation of Cherokee Nation LA-19-07.**
- 2. No private right of action is provided in Cherokee Nation LA-19-07 to enforce this provision.**

Respectfully submitted by:



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M. Todd Hembree
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