



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

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**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Questions Submitted by:** Speaker Mike Shambaugh, Cherokee Nation Tribal Council

**Opinion Number:** 2022-CNAG-01

**Date Decided:** March 8, 2022

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

**Are there any constitutional or statutory prohibitions on the Cherokee Nation Executive and Finance Subcommittee – Political Action Committee (“Sub Committee”), approving a monetary contribution to a candidate for state office who is also a sitting Tribal Council member?**

**SHORT ANSWER:**

There is no Constitutional or statutory prohibition on the Tribal Council approving a monetary contribution to a candidate for state office who is also a sitting Tribal Council Member. Further, there is no apparent conflict of interest so long as the sitting Tribal Council member does not chair the committee or vote on the contribution.

**BACKGROUND**

Cherokee Nation Tribal Councilor Keith Austin is running for Oklahoma State Senate. On January 27, 2022, there was an item on the agenda of the Sub Committee for Tribal Council to approve a financial contribution to Keith Austin, along with multiple other contributions to individuals running for state and federal elected positions. The Tribal Council voted to table the

approval of that contribution to Mr. Austin pending an Attorney General Opinion as to the legality of the contribution.

The Office of the Attorney General (“OAG”) has reviewed the Constitution, Cherokee Nation Code, and Tribal Council Rules of Procedure.

Article X, Section 10 of 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.

Because a political contribution to a candidate for state office is not “doing business with the Cherokee Nation,” the Constitution would not prohibit this proposed contribution.

This Office could find no statutory provisions that were directly relevant to the question of whether the contribution would be prohibited; however, the Tribal Council’s own rules offer some guidance. Per Section III(C)(2) of the Cherokee Nation Tribal Council Rules of Procedure, Final Version Approved September 27, 2007, “[a]gendas for Standing Committees shall be created by the Committee Chairperson.” Under Section III(C)(3) “[p]ersons seeking to place an item on the agenda of any standing committee, other than legislation, shall make a request in writing to the chairperson of said standing committee.” *Id.* Because the chairperson of the committee has almost unfettered discretion to create the agenda for the sub-committee meeting, there is a potential conflict if the chairperson of the Sub Committee posts an agenda that includes a political contribution to the state campaign of said chairperson. In this instance, the OAG recommends that Councilor Austin resign as the chairperson of the PAC Committee prior to the Committee deliberating and voting on the financial contribution to avoid a conflict under the Tribal Council Rules of Procedure.

Additionally, Section III(A)(1) states that a councilor “shall . . . abstain . . . [if] the member has a direct personal or pecuniary interest in such question.” Because Councilor Austin would have a personal and pecuniary interest in a contribution to his campaign for state office, he should abstain from any vote on that specific contribution.

Although this Office has not found any Constitutional or statutory prohibition (assuming the appropriate recusal and abstention mentioned above) that would prohibit the Tribal Council from making a political contribution to a sitting Tribal Council member that is also running for state office, if there are still questions about a conflict of interest, the Tribal Council is the body to make that determination. In this instance, the OAG can only opine on whether the action in question would violate the Constitution or laws of the Cherokee Nation and this Office has determined that it does not.

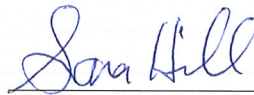
However, per Title 28 Section 13(C) of the Cherokee Nation Ethics Act, “In situations not defined by statute, any question of whether or not a conflict exists with regard to a Member of the Cherokee Nation Council shall be resolved by a majority vote of the membership of the Council. Such determination shall be made in public.” Therefore, to the extent there is any unanswered question regarding a “conflict of interest,” the Tribal Council can definitively answer that question by majority vote, with Councilor Austin abstaining.

### **CONCLUSION**

There it is the Official Opinion of the Attorney General:

- 1. There is nothing in the Constitution or laws of the Nation that would prohibit the Tribal Council PAC Committee from making a political contribution to the state office campaign of a sitting Tribal Council member, so long as that member is not the Chair or Vice-Chair of the PAC Committee and abstains from the vote.**

2. If there is still a question about whether a “conflict of interest” exists, that question should be answered by a majority vote of the Tribal Council since it is not directly addressed in the Ethics Act.



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