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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Melanie Knight, Secretary of State

Opinion Number: 2011-CNAG-02

Date Decided: July 29, 2011

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

- I. Will contribution limits for a special election for Principal Chief be a total of the General, Runoff and new Principal Chief elections? Or, will the contribution limits for the new Principal Chief election ordered by the Court start anew?***

The Cherokee Nation Supreme Court in its Final Order, issued July 21, 2011, specifically held that pursuant to LA-06-10 §102 it was impossible to determine the election result with mathematical certainty or to certify a successful candidate for the Office of Principal Chief. In the Matter of the 2011 Election, SC 2011-06 ¶3. Pursuant to LA 06-10 §102, the Cherokee Nation Supreme Court had several options to order relief including “invalidation of the election for a specific office or offices and the requirement of a new election in the cases where it is impossible to determine the correct election outcome with mathematical certainty.” The Supreme Court held that the 2011 election for the Office of Principal Chief was to be “vacated and held for naught” and characterized it as “invalid.” In the Matter of the 2011 Election, SC 2011-06 ¶¶ 4-5.

Although the question submitted to this office characterized the upcoming Principal Chief election as a “special election,” the current election contemplated for Principal Chief is outside the limited circumstances which would permit a special election under Cherokee law.

Special Election. “Special election” means an election specially set on a date other than the date certain established for general elections, for one or more of the following purposes: consideration of referendum and initiative petitions when special election is required by the Council or Principal Chief pursuant to Article XV, Section 4 of the Cherokee Nation Constitution, consideration of constitutional amendments when special election is required by the Council pursuant to Article XV, Sections 2 and 4 of the Cherokee Nation Constitution, election by the Council to fill Council vacancies pursuant to Article VI, § 13 of

the Cherokee Nation Constitution, election of the Principal Chief pursuant to Article VII, Section 5 of the Cherokee Nation Constitution.

26 C.N.C.A. §3-A(29).

These are the only circumstances under which a special election may be held and only one of those circumstances is ever applicable to an election for the Office of Principal Chief. If all three of the officers in the current line of succession for the Office of Principal Chief were unable due to death, removal, resignation or disability to act as Principal Chief, a special election could be held,¹ but that is not the circumstance the Nation currently faces.

The definition of general election is more expansive, and does cover a “regular election for the offices of the Principal Chief . . . as provided by law on a date Certain;”² Once the upcoming election planned for the Office is set to a date certain, the election would be best characterized as a general election, and not a special election.

The election law sets out a comprehensive campaign finance plan that requires disclosure of contributions and expenditures, limits upon how much money and in kind contributions a candidate may accept from any one individual, and limits upon when contributions may be accepted. Specifically, Cherokee Nation’s law provides that “No person shall contribute more than five-thousand dollars (\$5000) in cash or in kind to any one candidate during an election period.” 26 C.N.C.A. § 43(B)(emphasis added).

An “Election Period” is defined to “include the primary election and the runoff election.” 26 C.N.C.A. §3-A(15). The primary election is “the initial submission of candidates or measures to a vote of the people during a general election or a special election, prior to a runoff election.” *Id.* at 3-A(23). Since the 2011 election for the Office of Principal Chief has been vacated and held for naught by the Cherokee Nation Supreme Court, when Cherokee voters again head to the polls to vote for Principal Chief they will still be voting upon an initial submission of the candidates. By necessity, the scheduling of a “new” 2011 primary election for the Office of Principal Chief is going to enlarge the current election period. It does not create a new election period, however, because there was no election outcome from the June 25, 2011 election, and because that election was specifically vacated by the Supreme Court.

This conclusion makes sense when read with the rest of the election law. During the election period, candidates submit reports to the election commission that detail the

¹ “The Council may, in the case of removal, death, resignation or disability of the Principal Chief, Deputy Chief, and the Speaker of the Council, provide by law what officer shall then act as Principal Chief until the disability be removed or a successor shall be elected.” Article VII, Section 5 of the Cherokee Nation Constitution.

² “General election means a regular election for the offices of the Principal Chief and Deputy Principal Chief and for seats on the Cherokee Nation Council as provided by law on a date Certain; provided that elections for the following purposes may also occur during a general election: consideration of referendum and initiative petitions pursuant to Article XV, Sections 3 and 4 of the Cherokee Nation Constitution, and consideration of constitutional amendments pursuant to Article XV, Section 2 and Section 3 of the Cherokee Nation Constitution. “ 26 C.N.C.A. §3-A(16).

contributions, expenditures, any radio and television time donated by a station, and other financial activities. *Id.* at §§ 46-7. When the election is concluded, final financial disclosures from each campaign must be filed “no later than five (5) days prior to the date for swearing in of the successful candidates. The candidate receiving the highest number of votes in any Cherokee Nation Election shall not be eligible to take office until his or her final report is filed.” LA 06-10 § 46(C). Because no successful candidate was declared from the 2011 election for the Office of Principal Chief, no candidates have yet been required to file the final financial disclosure.

The statutory campaign finance laws set limits on what any candidate for elective office may accept in campaign contributions during an election period. The current laws provide for those limitations, as well as disclosure and reporting requirements, to continue throughout the primary and runoff elections until an election outcome is reached. The scheduling of a second general primary election, made necessary by the Supreme Court’s ruling in In the Matter of the 2011 Election, SC 2011-06, still constitutes “the primary election” in the 2011 election for Principal Chief, and therefore part of the “election period” as defined in LA 06-10 §3A-15.

The contribution limits for the new 2011 election for Principal Chief will be a total of the General, Runoff and new Principal Chief elections. Any individuals who have given \$5000 in money or in kind to one candidate’s campaign may not contribute any more to that candidate’s campaign.

II. Does the law provide an option to reopen voter registration for the new Principal Chief election?

Under Cherokee Nation’s election law, “[r]egistration” is defined as the “act of registering to vote in a resident voter’s home district, or in the case of a non-resident voter, the act of registering in the district of choice, in accordance with Article VI, Section 3 of the Cherokee Nation Constitution.” LA 06-10 §3A-25. The registration process is ongoing, and nothing prevents any qualified citizens of the Cherokee Nation from registering to vote at any time. LA 06-10 §22.

Once a person has registered to vote, he or she will continue to maintain that eligibility so long as that citizen continues to vote in Cherokee Nation elections; citizens are not required to re-register every election year under those circumstances³. “Any person who voted in the last primary, general or special election shall be deemed eligible to vote unless they have relinquished their citizenship.” *Id.* at §21A(3).

Even though a citizen may be otherwise eligible to vote and may register to vote at any time, he or she will not be permitted to participate in an election unless his or her registration was received by the Election Commission in accordance with the deadlines provided by the election law.

³ The rules are slightly different for original enrollees. “An original enrollee who is not on the Voter List at a precinct but who appears at the precinct with proof that he or she is an original enrollee and that his or her place of residence was within that district prior to the date of the election complete a voter registration form and maybe (sic) allowed to cast a ballot immediately thereafter.” LA 06-10, § 21(B).

The person shall be a citizen of the Cherokee Nation eighteen (18) years of age or older as of the date of any election; and a person shall be registered to vote no later than the last business day in March of the election year. Provided that Tribal citizens that are seventeen (17) years old and can show that their birth date is prior to the date of the primary election shall be allowed to register to vote.

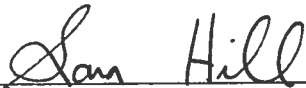
LA 06-10 §21A(2)

The term 'election year' is not defined in the election law. As discussed above, however, the primary election held in 2011 for the Office of Principal Chief was vacated, and the current Principal Chief is required by law to "order a new election to be held as soon as practical between the same candidates that participated in the election with the invalidated election results . . ." *Id.* at §103. When the date of the second primary election is set, it will still be part of the 2011 election for the Office of Principal Chief, albeit delayed, and will fall within the current election year.

Because the statute's plain language states that all voters must have registered by the last business day of March of the election year to be eligible to vote in the primary election, there is no option to reopen voter registration.

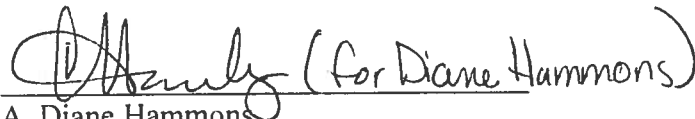
The law does not provide an option to reopen voter registration for the re-scheduled 2011 election for the office of the Principal Chief.

Respectfully Submitted by:



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