



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

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**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Jamie Hummingbird, Director, Cherokee Nation Gaming Commission

**Opinion Number:** 2018-CNAG-01 American Disabilities Act-Service Animals

**Date Decided:** April 11, 2018

You have effectively asked the Office of Attorney General for an official opinion regarding the following question:

- I. Whether Title I and Title III of the American with Disabilities Act (“ADA”), with regard to service animals, apply to the Cherokee Nation and its entities?**

No, the ADA service animal provisions do not effectively apply to the Cherokee Nation or its entities. However, for the reasons discussed below, it is the opinion of the Attorney General’s Office that the Cherokee Nation and its entities provide for reasonable employee accommodations for individuals with disabilities; public accommodation policies for individuals with disabilities; and develop policies for properly determining whether animals are indeed service animals.

**ANSWER AND ANALYSIS**

Your request requires an examination of the Americans with Disability Act (hereinafter “ADA”). Title I of the ADA requires that covered employers provide individuals with disabilities with equal opportunity to employment, thereby prohibiting impermissible discrimination based on disabilities.<sup>1</sup> Through express exemption, the ADA states that the term

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<sup>1</sup> See 42 U.S.C. § 12112(a) (1990).

“employer” does not include Indian tribes.<sup>2</sup> This express exemption clearly demonstrates that Congress did not intend to abrogate tribal sovereign immunity; therefore, absent an express waiver of sovereign immunity, Title I of the ADA does not apply to the Cherokee Nation. Cherokee Nation Human Resources Policies and Procedures do not currently contemplate the use of service animals by employees. Despite the express inapplicability of Title I to the Nation, it should adopt its own requirements or similar provisions to enable reasonable employee accommodation regarding service animals.

Title III of the ADA requires that public accommodations be accessible to individuals with disabilities.<sup>3</sup> At present, only the Eleventh Circuit has considered whether the ADA applies to an Indian tribe's public accommodations located on tribal land.<sup>4</sup> While the court noted that Title III of the ADA was applicable to the tribe's restaurant and casino as commercial operations open to the public; the court ultimately held that despite its broad applicability, Title III of the ADA does not expressly and unequivocally abrogate tribal immunity, therefore Title III of the ADA does not provide for a private right of action against a casino situated on tribal land. Moreover, though Title III contains no specific exemption for Indian tribes like Title I does, it appears still that Title III of the ADA does not effectively apply to Indian tribes because no practical means exist to enforce its application, absent an express waiver of sovereign immunity.

Currently, Cherokee Nation Entertainment Hotel Operations Policy and Procedures permit the use of service animals by individuals with disabilities.<sup>5</sup> Those same policies and procedures also include an eviction policy to complement its service animal accommodation, allowing Cherokee Nation Entertainment Hotels and Inns to remove “any guest who is in possession of an animal or animals other than a certified service animal or animals.”<sup>6</sup> Cherokee Nation Entertainment Hotel Operations Policy and Procedures do not include any guidance for determining whether a dog is indeed a certified service animal however.

The Code of Federal Regulations defines service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”<sup>7</sup> Other species of animals, whether trained or untrained, are not considered service animals under this definition. Moreover, the work or task performed by the service animal must be directly related to the individual's disability.

To determine whether a dog qualifies as a service animal, public accommodations may generally ask whether the service animal is required due to a disability and inquire as to the nature of the work or task the dog has been trained to perform. Public accommodations may generally not ask about the nature or extent of a person's disability nor require documentation for

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<sup>2</sup> 42 U.S.C. § 12111(5)(B)(i) (1990).

<sup>3</sup> See 42 U.S.C. § 12181 et seq.

<sup>4</sup> *Florida Paraplegic Assoc., Inc. v. Miccosukee Tribe of Indians of Florida*, 166 F.3d 1126 (11th Cir.1999). This case dealt with a casino and a restaurant, the question of public accommodation for tribal governmental buildings remains unanswered.

<sup>5</sup> OP-HO 256 (2004).

<sup>6</sup> OP-HO 267 (2004).

<sup>7</sup> 28 C.F.R. § 36.104.

the service animal. Further, service animals are generally not required to be visibly identified as such. Since Title III of the ADA effectively does not apply to tribal public accommodations however, the Cherokee Nation and its entities are free to adopt its own identification requirements or create procedures similar to those generally found acceptable under state and federal law. Accordingly, the Cherokee Nation and its entities may choose to disallow accommodations for "emotional support animals" entirely.<sup>8</sup>

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

- I. Although the Cherokee Nation and its entities are not required to follow federal law concerning disability accommodations, the Attorney General's Office encourages the Cherokee Nation and its entities to provide reasonable employee and guest accommodations with regard to service animals.**



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<sup>8</sup> The Department of Justice has stated that "[a]nimals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being are not service animals." NPRM Title III, *supra* note 5, at 34,516. Accordingly, species of animals that have consistently been excluded from consideration as certified service animals include: reptiles, rabbits, farm animals, ferrets, amphibians, and rodents. *See* 73 FR 34466, 34478 (June 17, 2008).