



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

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

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

**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Cara Cowan Watts, Cherokee Nation Tribal Councilor

**Opinion Number:** 2014-CNAG-01

**Date Decided:** March 27, 2014

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

**Question: What legal authority does Chief Baker have to issue the Executive Order on the minimum wage?**

For the reasons discussed in detail below it is the opinion of the Attorney General's Office that Principal Chief Bill John Baker, has the authority to issue Executive Orders, and that he did not overstep his executive power in issuing an order which requires the Cherokee Nation Government to pay its employees a minimum wage. The Principal Chief is vested by the Cherokee Nation Constitution with the duty of causing the laws of the Cherokee Nation to be faithfully executed. The Principal Chief is thus charged with the execution of Legislative Act 33-06 : "The Cherokee Nation Minimum Wage Act of 2006", and in his execution of the Act issued Executive Order 2014-02.

**BACKGROUND**

The Cherokee Nation Constitution provides that it is the duty of the Principal Chief to faithfully execute the laws of the Cherokee Nation and conduct all communications and business of the Cherokee Nation in a manner prescribed by law.<sup>1</sup> The Cherokee Nation Tribal Council is charged by the Cherokee Nation Constitution with the duty of establishing laws deemed

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<sup>1</sup> Constitution of the Cherokee Nation Article VII. Section 9.

necessary and proper for the good of the Cherokee Nation.<sup>2</sup> Thus, the Cherokee Nation Government includes a legislative branch charged with the duty of passing laws for the benefit of the Nation and an executive branch charged with executing the laws passed by the legislature.

There can be little argument that the Principal Chief has the power to issue executive orders as necessary to carry out the laws of the Cherokee Nation. “The executive power shall be vested in a Principal Chief, who shall be styled ‘The Principal Chief of the Cherokee Nation.’”<sup>3</sup> While the power to issue executive orders is not explicit in the Cherokee Nation Constitution, it has been acknowledged in the United States, which has a similar governmental structure, that such a power must necessarily reside with the Chief Executive if he is to faithfully execute the laws.<sup>4</sup> The Principal Chief of the Cherokee Nation is vested with the duty to faithfully execute the laws,<sup>5</sup> in a similar way as the President of the United States is vested in faithfully executing the laws of the United States.<sup>6</sup>

The Tribal Council of the Cherokee Nation, acting within their constitutional authority, passed “The Cherokee Nation Minimum Wage Act of 2006,”<sup>7</sup> which set minimum wage standards for employees of the Cherokee Nation Government. Under the Act, the minimum wage for a Cherokee Nation employee in 2014 would be \$9.00 per hour.<sup>8</sup> Once enacted, the Act should be faithfully executed by the Principal Chief.<sup>9</sup> The execution of the law then requires the Principal Chief to pay employees of the Cherokee Nation Government a minimum of \$9.00 per hour. This minimum is the least amount the Principal Chief may pay the employees and faithfully execute the law. The law was designed to set a minimum standard of payment, it however does not set a maximum standard of payment. The Principal Chief is also charged with carrying out the business of the Cherokee Nation.<sup>10</sup> This would include employing individuals

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<sup>2</sup> Constitution of the Cherokee Nation Article VI. Section 7.

<sup>3</sup> Constitution of the Cherokee Nation Article VII Section 1.

<sup>4</sup> “As the Government observes, the President’s power necessarily encompasses ‘general administrative controls of those executing the laws’ throughout the Executive Branch of government of which he is the head” Myers v. United States, 272 U.S. 52, 164, 47 S.Ct. 21, 71 L.Ed. 160 (1926).

<sup>5</sup> Constitution of the Cherokee Nation Article VII Section 9.

<sup>6</sup> Article II, Section 3, U.S. Constitution.

<sup>7</sup> Legislative Act 33-06 to be codified as 40 CNCA §70.

<sup>8</sup> Id., at Section 5(3).

<sup>9</sup> Constitution of the Cherokee Nation Article VII Section 9.

<sup>10</sup> Constitution of the Cherokee Nation Article VII Section 9.

necessary for the operation of the Cherokee Nation and determining the appropriate pay for those individuals within budgetary constraints. The Principal Chief cannot set the pay for an individual below the requirements of the Minimum Wage Act but can agree to pay that individual more than that minimum. Therefore, the Principal Chief in his execution of the law could agree to pay Cherokee Nation Governmental employees more than \$9.00 an hour. There is nothing in the law that prevents the Principal Chief from agreeing to pay employees of the Cherokee Nation Government more than \$9.00 an hour and he is not violating the law by doing so. A violation of the law would occur if the Principal Chief issued an Executive Order requiring payment below \$9.00 per hour. The Executive Order was a reflection of the Principal Chief's intent to pay all employees more than is required by "The Cherokee Nation Minimum Wage Act of 2006."

The Principal Chief was upholding his constitutional responsibility by issuing Executive Order 2014-02. The Principal Chief had to ensure that the law was faithfully executed and by paying employees of the Cherokee Nation Government more than \$9.00 per hour he is assuring that the law is being faithfully executed.

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

**The Principal Chief had the authority to issue Executive Order 2014-02, which enforces "The Cherokee Nation Minimum Wage Act of 2006" by setting a wage no lower than the wage allowed by that Act.**



Elizabeth Odell  
Assistant Attorney General  
Cherokee Nation



Todd Hembree  
Attorney General for the Cherokee Nation