



CHEROKEE NATION
OFFICE OF THE ATTORNEY GENERAL

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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: **Shawna Calico, Chairperson, Cherokee Nation Election Commission**

Opinion Number: **2018-CNAG-03 Absentee Ballot Requests and Notaries**

Date Decided: **November 30, 2018**

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

Question

- 1. Are Cherokee Nation Notary Publics limited as to how many Absentee Ballots they may notarize? Since Oklahoma Notaries can notarize only 10 Absentee Ballots for Oklahoma Elections, does the restriction apply to Cherokee Nation Elections and Cherokee Nation Absentee Ballots for Oklahoma Notaries; and, is there any limit on the number of Cherokee Nation Absentee Ballots an Oklahoma or other state Notary may notarize?**

Answer and Analysis

Title 49 C.N.C.A. Section 1, *et seq.*, Notaries Public, does not contain any limitations on the number of absentee ballots that a Cherokee Nation notary can notarize. Title 49 O.S. Section 1, *et seq.*, Notaries Public, does not contain any limitations on the number of absentee ballots that an Oklahoma notary can notarize. However, Title 26 O.S. Section 14-108.1(C), Elections; Notary Public Restrictions, states

A notary public shall be authorized to notarize a maximum of twenty absentee ballot affidavits for a single election. A notary public may be authorized to notarize more than twenty absentee ballot affidavits with the written approval of the secretary of the county election board. The limitation required by this

subsection shall not apply to the notarizing of ballots at the place of business of a notary public during the normal business hours of the notary public; provided, however, such limitations shall apply to any agency or other entity that provides voter registration services as required by the National Voter Registration Act of 1993 or by Sections 4-109.2 and 4-109.3 of this title.

But, this provision only applies to “an election conducted by a county election board or the State Election Board.” Title 26 O.S. §14-108.1(E) (emphasis added). So the Oklahoma restriction is not applicable to Oklahoma notaries who notarize absentee ballot requests for tribal, specifically Cherokee Nation, elections. Finally there is nothing in Cherokee Nation Title 26, Elections that places any limits on the number of absentee ballots that can be notarized by a single notary.

Therefore, it is the official opinion of the Attorney General that there are no limitations on the number of absentee ballots that can be notarized by an individual notary.¹

Question

- 2. May a Notary notarize any Absentee Ballot except their own and may a Candidate, the Candidate’s Spouse, the Candidate’s Family and/or their agents notarize Cherokee Nation Absentee Ballots, if they hold a valid Notary Public License?**

Answer and Analysis

Title 49 C.N.C.A. Section 1, *et seq.*, Notaries Public, does not prohibit a notary from notarizing the signatures of someone to whom they are related. The only prohibition is found in Section 6 which states that a notary “may not notarize his own signature.” Oklahoma law has the same provision. See Title 49 O.S. § 6. There are no prohibitions on notarizing the signatures of relatives, employees, etc. In fact, the notary laws of both Cherokee Nation and Oklahoma anticipate that notaries may indeed notarize signatures of people they know or are related to by specifically authorizing notarization without identification or other evidence “if that person is personally known to the notarial officer.” Title 49 C.N.C.A. § 113; 49 O.S. § 113. Finally there is nothing in Cherokee Nation Title 26, Elections that places any additional restrictions on notaries based on relationship to the notary, specific candidates, or anyone else.

¹ The original question stated “or other state.” The Office of the Attorney General did not research the notary or election laws of all 50 states. It is unlikely that any state law on state notaries or state elections would prohibit a notary from notarizing Cherokee Nation absentee ballots. However, even if such a law could be so interpreted, the prohibition would be on the individual notary and would not affect the validity of an otherwise proper and notarized Cherokee Nation absentee ballot.

Therefore, it is the official opinion of the Attorney General that a candidate, the candidate's spouse, the candidate's family and/or their agents may notarize Cherokee Nation absentee ballots if they hold a valid notary.

Question

3. **With regard to Absentee Ballot Request under Cherokee Nation Election Law:**
- a. **When may Cherokee Citizens and/or Candidates begin collecting Absentee Ballot Request Forms for a future election?**
 - b. **Section 72 of the Election Code does not require the Absentee Ballot Request to be dated. If the Absentee Ballot Request is dated prior to the date designated for the Election Commission to accept such request, but delivered to the Commission after such designated acceptance date, may the Election Commission accept and process the Absentee Ballot Request?**
 - c. **If an Absentee Ballot Request contains the information set forth in Section 72 (and/or the information contained in the proviso of said Section) of the Election Code, does the request have to be in a form prescribed by the Election Commission or any other particular form?**

Answer and Analysis

- a) There is nothing in Title 26, Elections, that places any time limitation on when any person (citizen, candidate, or otherwise) can begin collecting absentee ballot request forms for a future election. Therefore, it is the official opinion of the Office of the Attorney General that the collection of absentee ballot requests can occur at any time.
- b) There is nothing in Title 26, Elections, or elsewhere in Cherokee Nation law that would prohibit an absentee ballot request form from being completed prior to the date the Election Commission can accept them. Therefore, it is the official opinion of the Office of the Attorney General that the Election Commission shall accept and process absentee ballot requests that are dated prior to the date the Election Commission is authorized to accept absentee ballot requests, but not submitted until after that date.
- c) No, Title 26 C.N.C.A. § 72 states in its entirety

§ 72. Requests for absentee ballots generally

A registered voter of Cherokee Nation who is unable to vote in person at his or her precinct may request an absentee ballot from the Election Commission. The

request shall be in writing, preferably on a form prescribed by the Election Commission, and shall contain the following information:

1. Name;
2. Date of birth;
3. Address;
4. Cherokee Nation citizenship registration number; and
5. Handwritten signature or copy of original signature.

Provided that if the Cherokee Nation Citizenship Number is not provided with the request and there is sufficient information on the absentee application to identify the person as a registered voter, the application will be processed. All applications without sufficient information to clearly identify the registered voter may be returned for additional information. (Emphasis added).

Although the law *prefers* an Election Commission form, it does not so require. Therefore it is the official opinion of the Attorney General that, so long as the other requirements of Section 72 are met, the request is valid and should be accepted and processed by the Election Commission.



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