



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

P.O. Box 1533  
Tahlequah, OK 74465  
918-453-5000

**Sara Hill**  
**Attorney General**

**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Questions Submitted by:** Tina Glory Jordan, Secretary of State

**Opinion Number:** 2021-CNAG-02

**Date Decided:** August 12, 2021

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

**Does the appointment and confirmation of Janees Taylor to the position of Treasurer of the Cherokee Nation create a conflict of interest since her husband, Brent Taylor, serves on the Board of Directors for Cherokee Nation Businesses LLC?**

**SHORT ANSWER:**

There is no conflict of interest created by one individual serving on the Board of Directors for Cherokee Nation Businesses LLC (“CNB”) and the spouse of that individual serving as the Treasurer of the Cherokee Nation.

**BACKGROUND**

This Office has issued multiple opinions addressing conflicts of interest. *See* 2017-CNAG-01 (examining conflicts of interest where a spouse of contractor competes against businesses owned by the Nation); 2009-CNAG-01 (considering the Constitutionality of the Sunshine Ethics Act of 2007, which addressed conflicts of interest); 2006-CNAG-04 (addressing whether a conflict of interest exists if an Election Commissioner is related to an employee or judge); 2006-CNAG-

03 (questioning whether a Tribal Council member may work for or contract with another federally-recognized Indian tribe).

### **ANALYSIS AND DISCUSSION**

**A. The Cherokee Nation’s Constitution prohibits certain conduct by Cabinet Members, members of the Council, and employees of the Cherokee Nation.**

Specific provisions of the Cherokee Nation Constitution restrict the conduct of members of the Cabinet. If confirmed, the Treasurer-designate would be prohibited from receiving 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 provided by law. These requirements come from Section 10, of Title X of the Cherokee Nation’s Constitution.

Under these facts, the Treasurer-Designate would not be in violation of Section 10, Article X of the Cherokee Nation Constitution if she is confirmed as Treasurer of the Cherokee Nation. She would be receiving compensation for duties she is carrying out under tribal law, which is not prohibited by the Constitution.

**B. The Cherokee Nation Ethics Act of 2012 codifies issues relating to both conflicts of interests involving appointed officials of the Cherokee Nation, and states how to handle conflicts that the Constitution does not specifically address.**

The Cherokee Nation Ethics Act of 2012 (“Ethics Act”) defines several types of conflicts but none that directly addresses the question posed here. Primarily, the Ethics Act prohibits employees or officials from using their positions to solicit business for personal gain, prohibits one relative within the first degree of supervising an immediate family member, and prohibits an employee from contracting with the Nation or its entities except under individual employment contracts. None of these specific prohibitions affect the Treasurer-designate or her spouse.

Under the Constitution and laws of the Cherokee Nation, both the Treasurer of the Nation and a member of the CNB Board of Directors are “officials”,<sup>1</sup> and Cherokee Nation’s Ethics Act governs both such officials. The closest potentially relevant section from the Ethics Act regards contracting with relatives. Under 28 CNCA §20(A), “[n]o elected or public official, members or officers of the Council, Cabinet Member, or relative within the first degree of such individual shall be authorized to contract with the Cherokee Nation or its entities or instrumentalities or any entity where the tribe owns 51% or more shall contract with any primary contractor or sub-contractor who is contracting with the Cherokee Nation.”

However, the Board of Directors for CNB do not have contracts that define compensation, work hours and locations, etc. The operating agreement of CNB and tribal law define the role of the Board of Directors. Members of the Board of Directors for CNB receive compensation based upon the number of committees upon which he or she serves, and CNB may reimburse board members for out of pocket expenses due to such service<sup>2</sup>. The Principal Chief appoints officials of CNB, and the Tribal Council confirms those appointments. The compensation for the Board of Directors is set with the consent of the Chief on behalf of the Cherokee Nation as Member. CNB

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<sup>1</sup>The Ethics Act, 28 C.N.C.A. § 3(E) includes CNB Board of Directors in the definition of “Official” – “any elected or appointed person to any governmental entity, instrumentality, commission or board of the Cherokee Nation government or its instrumentalities any entities in which the Cherokee Nation is the sole or majority stock holder or owner and all entities that are 51% or more owned by Cherokee Nation as defined by this Act.”

<sup>2</sup> The First Amended and Restated Operating Agreement of CNB states in part in § 3.19 that “[t]he Board of Directors shall have the authority, by unanimous vote of the Directors in office, to fix the compensation of Directors with the consent of the Member acting by the Chief. The Directors may be reimbursed for out of pocket expenses, if any, for attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting or a stated salary as Director.”

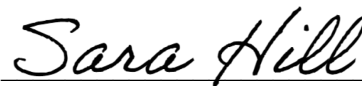
Board policy prohibits a Director from voting on any question in which he or she has a personal interest.<sup>3</sup>

The law does create specific provisions for resolution of conflict issues that are not defined by statute. If there is any question of whether or not a conflict exists, the issue is decided based upon the written policies and procedures for each entity. *See* 28 CNCA §13. In the case of the Treasurer-designate, any conflict issues would be reviewed based on the written policies and procedures for the Cherokee Nation. The Principal Chief - whose determination would be in writing and made open and available to the public - would make the final decision. For her spouse, the issues would be evaluated based on the policies and procedures applicable to the CNB Board of Directors.

### **Conclusion**

Therefore, it is the Official Opinion of the Attorney General:

- 1. Nothing in the Cherokee Nation Constitution or laws prohibits Janees Taylor from serving as Treasurer of the Cherokee Nation while her husband serves on the Board of Directors of CNB;**
- 2. If any conflict issue should arise during the term of either Director Taylor or Treasurer-designate Taylor that are not covered by either the Cherokee Nation Constitution or statutes, those conflicts can be addressed individually according the policies and procedures of the relevant body.**



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Sara Hill  
Attorney General  
Cherokee Nation

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<sup>3</sup> CNB Board policy defines a personal conflict of interest as “(a) situation in which an employee’s individual judgment may become biased, a personal benefit is gained, or an unfair advantage exists, because the employee has a financial interest, personal activity or relationship that could impair or be perceived to impair the employee’s ability to act impartially and in the best interest of the Company.” Even potential conflicts of interest must be disclosed by a Board member and submitted to the Ethics Board for review.