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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: The Honorable David Thornton, District 3
Opinion Number: 2006-CNAG-1
Date Decided: July 21, 2006

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

1. Does the Principal Chief violate the Cherokee Nation Freedom of Information Act if he holds a Legislative Conference without an agenda posted?

The Cherokee Nation Freedom of Information Act ("FOIA") was enacted pursuant to Legislative Act 25-01 which was signed into law on July 20, 2001, and requires public bodies to provide certain information to the public and to ensure that the public knows about and is permitted to attend meetings of public bodies. FOIA was amended by Legislative Act 24-04 which was signed into law on June 17, 2004, and which specifically addresses Legislative Conferences between the Principal Chief and the Cherokee Nation Tribal Council. L.A. 24-04, § 3.

Per the amending act, the Legislative Conference section is to be inserted in section 10 of FOIA at subsection E such that FOIA Section 10 would read in its entirety as follows:

- A. All public bodies must give written public notice of their regular meetings and special meetings as required by the Constitution and laws of the Cherokee Nation.
- B. Legislative committees must post their meeting agenda at least ten (10) days prior to the meeting. Subcommittees of standing legislative committees must give notice if it is practical to do so.
- C. Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (A), must make reasonable and timely efforts to give notice of their meetings.
- D. Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

- E. Informal legislative conferences between the Principal Chief and the Council of the Cherokee Nation are authorized, provided that the date, time and place of such meetings are posted at least ten (10) days in advance of such meetings. No formal action shall be taken at these conferences. Such conferences are open to the public unless closed pursuant to Section 9 of this Act.
- F. All public bodies shall make efforts to notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

75 CNCA § 10 (emphasis added).

FOIA, WHICH SPECIFICALLY AUTHORIZES LEGISLATIVE CONFERENCES TO OCCUR, DOES NOT REQUIRE THE POSTING OF AN AGENDA FOR LEGISLATIVE CONFERENCES AS LONG AS NO FORMAL ACTION OCCURS.

The only language in FOIA referencing agendas states, “Legislative committees must post their meeting agenda at least ten (10) days prior to the meeting. Subcommittees of standing legislative committees must give notice if it is practical to do so.” 75 CNCA § 10(B). The subsection which addresses Legislative Conferences specifically states that “the date, time and place of such meetings” must be posted 10 days prior to the Legislative Conference’s occurrence. 75 CNCA § 10(E). Thus, as long as a notice of the date, time and place of a Legislative Conference is properly posted to the public, the meeting is legal. It should be noted that the Legislative Conference does not permit any action to be taken at the Legislative Conference. If formal action were taken at a Legislative Conference, that action would be illegal because FOIA specifically states that no formal action can occur at a Legislative Conference. If formal action were to occur, the meeting would likely be considered Special Meeting of the Council in which case the purpose of the meeting, i.e., the agenda, must be published pursuant to the Constitution. See Cherokee Nation Const. art. VI, § 5 (2003). If the Council would prefer that the agenda of the Legislative Conference be published, it is recommended that the Council amend FOIA Section 10(E) in order to require such publication.

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

- 1. Legislative Conferences may legally occur without publication of an agenda so long as the date, time and place of the Legislative Conference is published at least ten (10) days in advance of the Legislative Conference and no formal action occurs at the Legislative Conference.**



A. DIANE HAMMONS
Attorney General of the Cherokee Nation