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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

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

Opinion Number: 2017-CNAG-03

Date Decided: May 12, 2017

This office has received your request for an official Attorney General Opinion in which you state:

You have asked the Office of the Attorney General for an opinion as to whether the Cherokee Nation Election Commission (“Commission”) should mail an absentee ballot to the address listed on a voter’s absentee ballot request form when the Commission has reason to believe the form contains irregularities relating to where the absentee ballot should be sent.

For the reasons set forth below, it is the official opinion of the Attorney General that the Commission must send a voter’s absentee ballot to the address the voter listed on the absentee ballot request form unless the Commission confirms from the voter that he or she wants the absentee ballot sent to an address that is different from the address listed on the voter’s absentee ballot request form.

BACKGROUND

As we understand the circumstances, the Commission received certain absentee ballot request forms that contain irregularities with regard to where the absentee ballot should be sent. We understand further that the Commission has contacted the voters who submitted the alleged irregular absentee ballot request forms. The Commission states additionally that it has been able

to obtain confirmation for many of the voters as to where the Commission should send the absentee ballot; however, there are some voters with whom the Commission has not been able to make contact. The Commission now asks whether it must send the absentee ballots to the voters with whom it has not been able to make contact and if so, to which address should the Commission send the absentee ballot.

ANALYSIS & DISCUSSION

The Cherokee Nation Election Code (“Election Code”) is codified at Title 26 of the Cherokee Nation Code Annotated, with its most recent amendments enacted pursuant to Legislative Act 12-16 and signed into law by the Principal Chief on May 18, 2016. The Election Code is the controlling law for the conduct of all Cherokee Nation elections for Principal Chief, Deputy Chief, Tribal Council, Constitutional amendments, initiatives and referenda of the Cherokee Nation.¹ The absentee voting laws are found in Chapter 6, Article 3 of the Election Code, “Absentee Voting.” Section 75 provides for the transmittal of absentee ballots to voters generally, as well as the preparation of record of absentee ballots issued.² Specifically,

When the Election Commission receives an absentee ballot request, the Election Commission shall, after verification of the requesting voter’s registration, transmit the ballot to said voter. A record shall be made of all absentee ballots issued, with the name, date of birth, voter's Cherokee Nation citizenship registration number, date of issuance and address of the voter to whom it was issued.³

As we understand it, the absentee ballot requests in question are otherwise complete and were submitted within the deadline to make such a request. Consequently, the only issue unresolved is where the Election Commission should send the absentee ballot in light of the alleged irregularities if the Commission is unable to contact the voter to confirm the proper address. Where “the terms of the statute are clear and unambiguous, the inquiry ends and we

¹ 26 C.N.C.A (2016) § 1.

² 26 C.N.C.A. (2016) § 75.

³ *Id.*

simply give effect to the plain language of the statute.”⁴ Neither Section 75 nor any other provision in the Election Code provides the manner in which the Election Commission should handle absentee ballot requests that contain *mailing address*⁵ irregularities.

In the Cherokee Nation, the right to vote is a fundamental right.⁶ As our Office opined in 2015-CNAG-03 and again in 2017-CNAG-02, the Cherokee Nation has long recognized the fundamental nature of this right and should continue to afford its citizenry the broadest protections when exercising this right. Therefore, since the absentee ballot requests were submitted timely and otherwise complete, the Commission must send the absentee ballot to the address listed on the absentee ballot request form even if the Commission is unable to contact the voter to confirm the proper mailing address. This is consistent with both the authority and responsibility granted to the Commission, as well as with the spirit and intent of the Election Code to provide Cherokee voters with as many opportunities to cast a ballot as feasible.

IT IS THEREFORE THE OFFICIAL OPINION OF THE ATTORNEY GENERAL:

1. The Election Commission must send a voter’s absentee ballot to the address the voter listed on the absentee ballot request form unless the Commission confirms from the voter that he or she wants the absentee ballot sent to an address that is different from the address listed on the voter’s absentee ballot request form.

Pursuant to Title 51, § 105(B)(4), this Opinion, 2017-CNAG-02, shall have the force and effect of law in the Cherokee Nation until a different opinion or order is entered by the Cherokee Nation Court.



Todd Hembree
Attorney General

⁴ *United States v. Sprenger*, 625 F.3d 1305, 1307 (10th Cir. 2010) (internal quotation mark omitted).

⁵ Note, however, the Election Code does provide that the Election Commission may return an absentee ballot request for more information if the form does not contain sufficient information to clearly identify the registered voter. 26 C.N.C.A. (2016) § 72.

⁶ See *Corn silk v. Tribal Council*, JAT-96-15.