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**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Chuck Hoskin, Jr., Cherokee Nation Tribal Council

**Opinion Number:** 2013-CNAG-04

**Date Decided:** August 20, 2013

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

**1. Is submitting a budget to the Tribal Council each year for Council approval, which includes how the TERO will use funds for training during the upcoming fiscal year, in compliance with the mandates of Legislative Act 30-12 Section 7?**

As we understand the factual basis for your question, 40 CNCA § 1013 provides that “[a]ll funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.” See Cherokee Nation Employment Rights Act, LA-30-12, Section 7. There are differing interpretations as to what the phrase “and approved by the Council” means under the Act.

**BACKGROUND**

The Cherokee Nation Employment Rights Act (the “TERO Act”), in its current incarnation, is codified at Title 40 of the Cherokee Nation Code Annotated and was enacted pursuant to Legislative Act 30-12 which was passed by the Tribal Council on August 13, 2012 and subsequently signed into law by Principal Chief Bill John Baker. The TERO Act was promulgated to encourage the employment of Indians and prevent discrimination against Indians in the employment practices of the Cherokee Nation and for all employers who are doing business with the Cherokee Nation on Cherokee Nation Indian Country. 40 CNCA § 1003.

The Tribal Employment Rights Office (“TERO”) is an Executive agency created by statute to administer the employment rights program of the Cherokee Nation. 40 CNCA § 1011. The TERO is staffed by employees assigned by the Executive Branch of the Cherokee Nation. 40 CNCA § 1004. Among the enumerated powers granted to the TERO, the TERO may “take such actions as are necessary to achieve the purposes and objectives” of the TERO Act. 40 CNCA § 1011. The TERO is further empowered to “obtain funding from Federal, state and other sources to supplement Council appropriations...” Id.

The Cherokee Nation Tribal Council (the “Council”) is the constitutionally created legislative body for the Cherokee Nation. Cherokee Nation Constitution, Article VI, Section 1 (2003). The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation; provided those laws shall not be contrary to the provisions of the Constitution. Id. at Section 7. The Council is further prohibited from enacting any law with retroactive effect or operation. Id. at Section 8.

“The Council shall provide by law for annual expenditure of funds, and the source from which funds are to be derived, to defray the estimated expenses of the Executive, Legislative, and Judicial branches and the departments of government of the Cherokee Nation for each fiscal year.” Cherokee Nation Constitution, Article X, Section 2. “All laws authorizing the expenditures of money by and on behalf of the Cherokee Nation shall specify the purpose for which the money is to be used, and the money so designated shall be used for no other purpose.” Id. at Section 8. “The Council shall require that records be maintained and provided to the Council of all funds, monies, accounts and indebtedness...of the Cherokee Nation...” Id. at Section 4. The Council shall review, authorize, approve and ratify all appropriations and planned expenditures from all sources in compliance with the specific laws governing appropriations. 62 CNCA §§ 31, 32.

**ANSWER:**

**The TERO is in compliance with the mandates of Legislative Act 30-12 Section 7 by submitting its budget to the Tribal Council for approval during the annual budgeting process.**

Legislative Act 30-12 Section 7 provides that “[a]ll funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.” 40 CNCA § 1013. It is clear from the statute that the allocation of tribal funds collected by the TERO for job training programs must be approved by the Council. The question then turns on what type of Council approval is required.

When examining a statute for statutory construction, the logical starting point is an examination of the language of the statute itself. The United States Supreme Court often recites the “plain meaning rule,” that, if the language of the statute is clear, there is no need to look outside the statute to its legislative history in order to ascertain the statute’s meaning. CRS Report for Congress, Statutory Interpretation: General Principles and Recent Trends, Order Code 97-589 (“CRS Report”). Similarly, the Cherokee Nation Supreme Court also refers to the plain meaning rule when ascertaining the meaning of a statute. “The general rule in interpreting the intent of

the Council of the Cherokee Nation...is that the words used by the Council in the Code are presumed to have been used in their plain or ordinary meaning, within the context in which they were used, unless it is clear that the words have acquired a technical or special legal meaning.” Ragsdale v. Election Commission, JAT 98-19, citing 73 Am Jur 2d, Statutes, § 206 (Court’s emphasis). Accordingly, this Office will also apply a plain meaning analysis as the first step in interpreting a Cherokee Nation statute.

The text of the statute in question states that the funds collected by the TERO and allocated to job training programs are tribal funds and must be approved by the Council. 40 CNCA § 1013. The statute is silent as to how, when or how often the Council must approve the allocation of those funds. As such, unless it would render the reading of the statute an absurdity, it would be inappropriate to judicially insert qualifications as to how, when or how often the Council must approve the allocations. *See Ragsdale v. Election Commission*, supra. Under a plain meaning analysis, the statute simply requires that the Council must approve the allocation of the funds at some time. An analysis which would inject additional requirements into the statute would result in an “enlargement” of the statute, rather than “construction” of it. *See CRS Report*, supra, citing Iselin v. U.S., 270 U.S. 245, 250 (1926).

As noted above, the Tribal Council is tasked with appropriating all funds of the Cherokee Nation to be used for specific purposes on behalf of the Legislative, Executive and Judicial branches of government. *See Cherokee Nation Constitution*, Article X. The Council also requires a record of any and all such expenditures be maintained and provided to the Council. *Id.* An annual budget appropriation process is followed each year in which the budget of the Cherokee Nation is considered and debated first at committee, then at full Tribal Council. 62 CNCA §§ 31, 32. As part of the annual budget appropriation process, the annual budget for the TERO is submitted to, considered and ultimately approved by the Tribal Council. *See e.g.*, LA-37-12 An Act Authorizing and Approving the Fiscal Year 2013 Operating Budget. The TERO Job Training Programs budget is contained within the annual TERO budget as approved by the Council. *Id.* As such, the Tribal Council approves the allocation of the TERO funds expended for job training programs as part of the annual budget appropriation process as required by law.

It is clear from the preceding paragraphs that the statute in question simply requires that the funds allocated to job training programs be approved by the Council at some time. It is also clear that the TERO Job Training Programs funding is approved by the Tribal Council during the annual budget appropriations process. As written, this satisfies the requirement of 40 CNCA § 1013 which provides that “[a]ll funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.” Such a plain reading of the statute does not render the result an absurdity and is an appropriate interpretation under the law.

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

- 1. The approval of the TERO Jobs Training Program by the Tribal Council during the annual budget appropriations process satisfies the approval requirement of 40 CNCA § 1013.**



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