



CHEROKEE NATION
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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Linda O'Leary, Cherokee Nation Tribal Council

Opinion Number: 2006-CNAG-4

Date Decided: October 23, 2006

This office has received your request for an official Attorney General Opinion in which you asked whether there are impermissible conflicts of interest when: (1) a member of the Election Commission receives payment for services previously performed or is closely related to a member of the judicial branch or, (2) when a Commissioner is closely related to an employee of the Executive Branch. Specifically, "Commissioner one" is the brother of a Cherokee Nation justice and his law firm recently received attorney fees for work done on behalf of Cherokee Nation prior to his taking office as a commissioner, and "Commissioner two" is married to an employee and the mother of another employee.

ANSWER AND ANALYSIS

Councilmember O'Leary cites the final sentence of § 11 (A) of the Election code: "It shall be an independent commission in the performance of its statutory authority and in the performance of such authority shall not be subject to direction or supervision or of any other type of influence by the Executive Office or the Cherokee Nation Council." This provision, however, does not directly address the question presented.

Paragraph (C) of § 11 does directly address the qualifications and prohibited relations of Election Commission members:

C. Qualifications. No elected official of the Cherokee Nation, no person who is related within the third degree by either consanguinity or affinity to an elected official, no employee of the Cherokee Nation, including any corporation, agency or other entity which is at least fifty-one percent owned by Cherokee Nation, no person who has been convicted of a felony, no person who has ever plead no contest or guilty to a felony without said matter being expunged from court

Indian Tribe that would be considered a Felony in State or Federal Court shall serve on the Election Commission. No candidate or regular employee of a candidate for office or person who is related within the third degree by either consanguinity or affinity to a candidate for office shall serve on the Election Commission.

This statute gives five categories of exclusions but none apply to the circumstances described with Commissioners one and two, above. Paragraph (C) controls the question here because “[a]s always, “ [w]here there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.’ ” *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, at 445, 107 S.Ct. 2494, at 2499 (1987).

Paragraph (C) is very specific in the requirements for, and prohibited relations of, an Election Commissioner. The Tribal Council, in 2005, amended the election code and made two changes to the qualifications section. Nowhere is being related to a judge or employee listed as a disqualifier. Another canon of statutory construction is *expresio unis est exclusio alterius* (expression of one word is exclusion of all others). Had the Tribal Council intended to disqualify persons related to employees they would have said so. Neither is there catch-all language by which the specific circumstances may be extended.

There has been no allegation that undue influence has been used upon any commissioner. If any person at issue here influenced a Commissioner in their duties, it would be a violation of § 11 of the Election code. However, Commissioners take an oath set out in Election code § 13:

I do solemnly swear, or affirm that I will faithfully execute the duties of the Election Commission of the Cherokee Nation in a responsible, impartial and unbiased manner, and will, to the best of my ability, preserve, protect and defend the Constitutions of the Cherokee Nation, and the United States of America. I swear or affirm further, that I will do everything within my power to promote the culture, heritage and traditions of the Cherokee Nation.

Employees and Judges take a similar oath. There is a presumption that an oath will be followed. *Columbia Heights Realty Co. v. Rudolph*, 217 U.S. 547, 30 S.Ct. 581 (1910); *State v. Pacheco* 138 N.M. 737, 126 P.3d 553 (N.M. 2005). Thus reading § 11 and § 13 together we ascertain the intent of the Council to generally restrict influence by use of the oath.

For the same reason there is no prohibition on previously working for Cherokee Nation as an independent contractor. The exclusion “no employee of the Cherokee Nation” does not exclude independent contractors. “‘Employee’ is a term that must be distinguished from ‘independent contractor.’” BLACK’S LAW DICTIONARY 525 (6th Ed. 1990). This clause indicates that the legislature considered working relationships and decided to restrict the exclusion to employees and allow independent contractors or certainly former independent contractors to be eligible.

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

Having found no legislative intent to restrict possible family relations beyond candidates we must determine that there is no conflict of interest or other violation of law when an Election Commissioner is related to an employee or judge. Similarly there is no prohibition on previously working for Cherokee Nation as an independent contractor.

A handwritten signature in cursive script, appearing to read "A. Diane Hammons", with a long, sweeping horizontal flourish extending to the right.

A. DIANE HAMMONS
Attorney General of the Cherokee Nation