



CHEROKEE NATION
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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Cherokee Nation Election Commission

Opinion Number: 2023-CNAG-01

Date Decided: March 23, 2023

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

Does an electronic signature generated using a person’s finger or an electronic “stylus” pen on an electronic screen meet the requirements of a “handwritten signature” under Title 26, Sections 3(35); 21(E); and 72(5) of the Cherokee Nation Election Code?

SHORT ANSWER:

No, an electronic signature generated by using one’s finger or an electronic pen on an electronic screen does not meet the statutory requirements of the Cherokee Nation Election Code for a “handwritten signature” on voter registration and absentee ballot request forms.

ANALYSIS AND DISCUSSION

Any analysis of the statutory requirements of the Cherokee Nation Election Code must begin with text of the statute itself. In this case, the Cherokee Nation Election Code requires a “handwritten signature” or a “copy of” the original signature on voter registration applications and requests for absentee ballots. Cherokee Nation Election Code Title 26, Section 21(E) further states that, “Registered Voters must complete the Voter Registration Form provided by the Election

Commission and must contain the Voter's handwritten signature or a copy of the Voter's original signature."

At Section 72(5) of the Election Code requires that a request for an absentee ballot "shall"¹ contain the "hand written signature of the Registered Voter or copy of original signature." And finally, the Cherokee Nation Election Code defines a "signature" as "a natural person's written name in a distinctive way as a form of identification in authorizing a document or other writing or a person's mark with one witness. 26 C.N.C.A. § 3(35).

These provisions regarding handwritten signatures are not simply requirements that were carried forward without review or discussion from old versions of the Election Code. In fact, each of these provisions were added during a time that Council would have been aware of the availability of electronic signatures. Tribal Council added each of the provisions in question since 2016.

In 2016, Tribal Council added the word "handwritten" before the word "signature" in the section regarding absentee ballot requests via LA-22-20. When this amendment was discussed during the Rules Committee meeting, Tribal Council clarified that the word "handwritten" or "copy of" was added to allow the Election Commission to receive a copy of the paper absentee

¹ Use of the word "shall" as used in this section means that in order for an absentee ballot request to be valid, the five requirements must be met. Shall means "has a duty to; more broadly, is required to . . . This is the mandatory sense that drafters typically intend and that courts typically uphold." Black's Law Dictionary (11th ed. 2019), shall.

To the extent that that Cherokee Nation Attorney General Opinion 2013-CNAG-06 conflicts, it is overruled. The validity of that prior opinion is in doubt, as the request for the Opinion was submitted by "a registered voter. Cherokee Nation law states that only a "[m]ember of the Tribal Council, the Principal Chief, the Deputy Principal Chief, or by the Group Leader or equivalent of any Cherokee Nation board, commission or executive branch department" may request an official Attorney General Opinion. 51 C.N.C.A. § 105(4).

ballot request form with an original signature via fax or email. *See* Cherokee Nation Rules Committee Meeting minutes and video March 9, 2016.

In 2022, when the Cherokee Nation Tribal Council amended the Election Code, there was specific discussion about the “handwritten signature” provision that was added to the voter registration form. Specifically, Council Keith Austin noted that the amendment as presented did not clarify that a “signature” must be in the “voter’s own hand” and that it “could be a slippery slope.” As a result of that discussion, the amendment requiring a “handwritten signature or copy of Voter’s handwritten signature” was added to the 2022 Election Code amendment. *See* Cherokee Nation Tribal Council Rules Committee Meetings Minutes and Video for March 31, 2022 and April 28, 2022.

In 2020, when the definition of “signature” was added to the Election Code, there was no discussion of the new definition, however, there is no indication in any of the text or discussion of these provisions that the Tribal Council intended or anticipated that voter registration or absentee ballot requests would be able to be completed and signed on an electronic device. In fact, all available evidence indicates that Council requires a physical, tangible signature of ink on paper.

Although it seems clear that Tribal Council intend a “pen on paper” signature there are also other portions of the Cherokee Nation Code as well as persuasive authority from other jurisdictions that further assist in the analysis of the questions presented.

First, the following provisions discuss “signature” or “handwritten” in other titles of the Cherokee Nation Code. The Cherokee Nation Uniform Commercial Code, Title 80 § 3-114, which deals with commercial transactions, states that “handwritten terms prevail” over both typewritten and printed terms. This section indicates that something written on paper with a pen is different from something that is electronically recorded and printed and that “handwriting” is a superior

form of marking a document. Further, there are more than 200 instances in both the Election Code and other areas of the Cherokee Nation Code that use the word “writing.” Elsewhere in the Code, the word “written” is used more than 400 times. It is clear from the context of those laws that simply using the word “writing” or “written” can include electronic, printed, computer generated documents, etc. By contrast, by using the term “handwritten” in the Election Code, it is clear that Tribal Council deliberately made the decision to require a signature with pen on a paper.

Black’s Law Dictionary, which is a reference used when interpreting legal terms that are not otherwise defined in the law, defines “handwriting” as “a person's chirography; the cast or form of writing peculiar to a person, including the size, shape, and style of letters, and whatever gives individuality to one's writing. 2. Something written by hand; a writing specimen.” Black's Law Dictionary (11th ed. 2019), handwriting. This also supports the conclusion that a “handwritten signature” must be a physical writing instrument on paper. Black’s further distinguishes a “signature” from an “electronic signature” or a “digital signature, indicating that they are not interchangeable. ” Black's Law Dictionary (11th ed. 2019), signature.

As to persuasive authority, the Oklahoma Attorney General opined in 2014, that a signature made with an electronic pen on an electronic screen did not meet the Oklahoma statutory definition of “signature” in the Oklahoma Election Code. *See* 2014 OK AG 10.² Although not binding on the Nation the persuasive reasoning in that Opinion supports a similar result in this matter.

² The Oklahoma law in question in the referenced Oklahoma Attorney General opinion has since been amended to specify a process for electronic signature. Just as the Oklahoma Legislature had the power to amend the Oklahoma voting law to allow for electronic signatures on voter registration forms, the Cherokee Nation Tribal Council has the power, if it has the desire, to allow electronic signatures in Cherokee Nation elections. Until it does so, the Nation is bound by the plain language of the law.

In our advanced technological times, there are various ways to electronically “sign” a document. One can use a finger or an electronic pen to recreate a signature on an electronic screen that transfers that recreated signature to a document that can be printed or shared via electronic means. One can also use programs such as “DocuSign” or other electronic “signatures” using personalized identification numbers. The Office of the Attorney General must assume that the Tribal Council was aware of these various forms of “signing” documents or records when these signature amendments began in 2016. However, there is nothing in the language of the Cherokee Nation Election Code or the discussion surrounding those amendments that indicates that Tribal Council wanted to allow voter registration forms or absentee ballot requests that did not contain a traditional ink on paper signature or a copy of that original ink on paper signature.

The Office of the Attorney General has been asked if a signature on an electronic screen using either one’s finger or an electronic pen meets these statutory requirements for voter registration and absentee ballot requests. It does not.

CONCLUSION

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

- 1. The Cherokee Nation Election Code requirement for a “handwritten signature” or “copy of original signature” means a signature, by the voter, on paper with a permanent mark. Therefore, an electronic signature made on a screen with one’s finger or an electronic pen that is then printed or transmitted in an electronic form, does not meet the statutory requirements for a handwritten signature for voter registration forms or absentee ballot request forms.**



Sara Hill, Attorney General