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BEFORE THE CHEROKEE NATION CONSTITUTION
CONVENTION COMMISSION

MONDAY, OCTOBER 12, 1998

WESTVILLE HIGH SCHOOL AUDITORIUM

WESTVILLE, OKLAHOMA

A P P E A R A N C E S

- Commissioner: Mr. Ralph Keen
- Commissioner: Ms. Louella Hummingbird-Coon
- Commissioner: Mr. George Wickliffe
- Interpreter: Mr. Marion Jumper
- Reported by: Ms. Paula D. Louderback, C.S.R.

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1 P R O C E E D I N G S

2 MR. KEEN: We can circulate any ideas you have to
3 the rest of the comission, instead of just formally chatting.

4 MR. CENTER: Okay. Well, Paula knows who I am. I
5 discussed the other night at the election commission meeting
6 with co-chair of the convention, Constitution Convention
7 Commission, with Ralph Keen. And the way the Election Act of
8 7-97 is set up, we have a deadline for submitting changes to
9 the Rules Committee, and that deadline is the August prior to
10 the election year. This year the commission was not seated in
11 time for any changes to be made or take place. There were
12 several questions that arose from the Act of 7-97. My concern
13 was the Rules Committee. Anytime a change is made by the
14 Election Commission of this Act, or recommended a change made
15 by the Commission, the Election Commission would go to the
16 Rules Committee which is supposed to be autonomous from the
17 Nation with no partiality, just like the Constitution
18 Convention Commission. But I find out that the Rules
19 Committee is made up of all of the council members, and then
20 the Rules Committee votes to approve whatever changes that
21 might have came about to the Commission through lawsuits, or
22 as there is a pending lawsuit, interpretations of the Election
23 Commission Act.

24 The Rules Committee takes the recommendations from us,
25 the Commission, they vote on it or they work on those changes,

1 then they go to the council. If the Rules Committee is the
2 council, how can the council approve something and go to the
3 council which it already is for approval? Which each four (4)
4 years these same Rules Committee and council persons, gets
5 back to what Mr. Phillips said awhile ago, they are
6 incumbents. But here we've had several years - four (4),
7 eight (8), whatever - of rules that have been set up under an
8 incumbent regime, or however you want to put it, any other
9 candidate coming in.

10 So my suggestion would be to have the Constitution
11 address the issue of who may sit on how this Election
12 Commission that's supposed to be totally unbiased, how it's to
13 be made up. Whether it be, say, by a council person, a person
14 appointed by the council person, a person appointed by, say,
15 the Chief, and then have one carry-over commissioner, election
16 commissioner, and those three (3) of the five (5) would make
17 your quorum and then appoint or select two (2) at large,
18 through some form of resume, providing they met with the Act
19 of 7-97 where they have not served on a commission in the past
20 two (2) years or where they have not -- where they are not
21 council persons who decided maybe not to run and then choose
22 to sit on the commission. That's a violation of the Act
23 itself. So these are pretty much the concerns that I had
24 about the rules.

25 We are in pending litigation at this time because of the

1 interpretation of some of the stuff that is in the Election
2 Act of 7-97. And this lawsuit comes on through a Jessup
3 Bryant (phonetic). His council is Chad Smith. And we're
4 waiting on a ruling from the Judicial Appeals Tribunal at this
5 time to interpret some of the laws within the Election Act.

6 MR. KEEN: Now, as I understand, Mr. Centers, there
7 is no language currently in the Constitution with respect to
8 the Election Commission?

9 MR. CENTER: That's correct. That is correct.

10 MR. KEEN: So we would be talking about, in essence,
11 adding another article?

12 MR. CENTER: Right.

13 MR. KEEN: Specifically, for the creation of this
14 commission and the appointment of this commission?

15 MR. CENTER: And therefore I think if the
16 Constitution addressed this, it would -- it would remove it
17 from a council in which is the Rules Committee that votes for
18 all of the changes.

19 MR. KEEN: Uh-huh.

20 MR. CENTER: And like I said, every four (4) years
21 they are the incumbents also. If they choose to run again,
22 they're the incumbents again every four years.

23 MR. KEEN: What powers would you have the
24 Constitution delegate to the commission?

25 MR. CENTER: It's not the powers that I would see.

1 This is my first term on the commission, and it's amazing to
2 me what there is to do there that's written into that Election
3 Act of 7-97, in which I submitted to you a copy of it. It
4 lays the sole -- it lays the sole responsibility of these
5 elections on the commission itself, but yet the rules are made
6 by the Rules Committee which is the council. It's back to
7 legislative again.

8 MR. KEEN: Uh-huh.

9 MR. CENTER: And my question was: How is the
10 Election Commission separate? How is it separate if these
11 election commissioners are being put on, two (2) by council
12 and I believe it's two by the Chief. Isn't that right, Mr.
13 Phillips?

14 MR. PHILLIPS: Yes, I think so.

15 MR. CENTER: And then the four (4) of us elect
16 through resume a fifth (5). That's under the present deal.
17 If the Constitution addressed this issue in some form through
18 an amendment, to set up this commission that's solely
19 responsible for all of the elections and takes it, as Mr.
20 Phillips said awhile ago, take the politics out of it to where
21 it's done by a set set of rules, with no deviance whatsoever
22 from it.

23 MR. KEEN: Well, your suggestion is very interesting
24 with the question of who has the authority, because even you
25 will acknowledge that there's a lot of special rules that go

1 along with the process of conducting an election. There's
2 decisions that have to be made, and right now the council has
3 that authority. The commission can only operate under the act
4 which creates it, and so any rules that are made or any
5 changes to that legislation has to go through the council;
6 correct?

7 MR. CENTER: Right.

8 MR. KEEN: Well, if we could establish this
9 commission by Constitution, who would have the authority to
10 set up the rules of the commission and regulate its own
11 activities? Do you see what I'm saying? If we're trying to
12 get the council out of the picture, then the only ones left
13 would be one of the other two (2) branches of government, or
14 give that authority to the commission itself.

15 MR. CENTER: Well, I think, Mr. Keen what I'm -- not
16 wanting to remove the council from the -- in total from it, I
17 guess what I'm trying to say is the problem we have here. And
18 like I said, I know just about every council person and I
19 don't have a problem with any of them, but it's a people
20 perception that I'm having a problem with. The appearance of
21 an impropriety where your Rules Committee that we submit
22 change to, it's submitted to a body of people called the Rules
23 Committee which in actuality is the council.

24 QUESTION FROM THE FLOOR: Actually, you're
25 submitting it to the council?

1 MR. CENTER: Uh-huh, actually you're submitting it
2 directly to the council through a term called "Rules
3 Committee."

4 QUESTION FROM THE FLOOR: Yeah, uh-huh.

5 MR. CENTER: And then every four (4) years these
6 people are the incumbents. And other people out here say, you
7 know, the appearance of an impropriety is what we're -- and
8 you go on into the Election Act. Now, we do make up
9 regulations. The Election Commission can make up regulations
10 that we do not have to go to the council with -- with rules
11 and regulations that we don't have to go to the council with.

12 MR. KEEN: Uh-huh.

13 MR. CENTER: Which we don't attend -- such as we
14 don't attend -- Mr. Phillips is running. We're not allowed as
15 commissioners to attend anything that's political in nature of
16 any way. That's a no-no.

17 QUESTION FROM THE FLOOR: Uh-huh, uh-huh.

18 MR. CENTER: Even if we're there, we must leave. If
19 someone comes to the Election Commission in the form of
20 political, we must ask them to go elsewhere. We can't go and
21 attend. I can't go and openly support him. I've got -- I
22 must be sealed.

23 But my problem there is -- and if Mr. Phillips maybe
24 could lend some -- or anybody could lend something to what I'm
25 trying to say here -- is actually we submit change to the

1 council. And I don't know what the answer is, but that's -

2 QUESTION FROM THE FLOOR: So what you're saying is -
3 am I right here - that the problem lies in the fact that the
4 council may be in a position to make rules and regulations or
5 changes that would be advantageous to one of them as a
6 candidate? Is that the problem?

7 MR. CENTER: In the present way your Election Act is
8 set up. In other words, we -- August of this year we were
9 shut off, and we weren't seated in time to make any changes.

10 MR. KEEN: Let me interrupt you just a minute.

11 (Whereupon, a brief discussion was held off of the
12 record.)

13 MR. CENTER: You know, I had talked to you before on
14 this, and if anyone can give me some help on it or help me
15 understand. Because I want to do, as a commissioner, I want
16 to do the best job that can possibly be done and follow it to
17 the letter.

18 MR. KEEN: Well, I think you raise a valid problem,
19 without a doubt, a valid issue. I'm just not sure if there's
20 an easy answer to it with respect to the Rules Committee and
21 the way it's currently structured. And with the small size of
22 our legislative body, I'm not sure if that's going to change
23 anytime soon. I could see where the Constitution could very
24 easily delegate the responsibility exclusively to the council
25 and thereby by pass the Rules Committee, but I'm not sure if

1 that would gain us anything.

2 MR. CENTER: It wouldn't change anything.

3 MR. KEEN: Right.

4 MR. CENTER: I agree with you it wouldn't change
5 anything, because they are the Rules Committee. The council
6 and your Rules Committee are the same.

7 MR. KEEN: And the other side of this coin is we
8 don't want to legislate through the Constitution.

9 MR. CENTER: That's true, too.

10 MR. KEEN: You know, we don't want to get into a
11 four or five page thing just trying to set up one commission.

12 MR. CENTER: Right, right.

13 MR. KEEN: Because then it's almost impossible to
14 change, and that's a poor outcome as well. So it sounds to me
15 like to carry out what you're suggesting, the Constitution
16 would need, in general terms, create this Commission, and then
17 vest that Commission with the authority and responsibility to
18 conduct elections pursuant to the requirements of the
19 Constitution and give that commission exclusive authority to
20 carry out that responsibility, and by in large take it out of
21 the hands of the council.

22 MR. CENTER: Any changes -- who's your -- I don't --
23 who's the tribal -- if anything, take it through the tribal
24 lawyers on any changes, to make sure that any changes that
25 were done were legal in respect to the Constitution and the

1 Act.

2 MR. KEEN: Well, you have -- doesn't the commission
3 now have the ability to engage independent counsel, right,
4 legal counsel?

5 MR. CENTER: Yes, yes, we do.

6 MR. KEEN: Right.

7 MR. CENTER: And I think there has been independent
8 counsel on until just recently.

9 MR. KEEN: And might I suggest is that any rules
10 that you create as a commission are always going to be subject
11 to judicial review by the judicial branch. So, you know,
12 they'll be there to make sure that it's in compliance with
13 constitutional requirements. You know, just like any special
14 administrative board or authority created, like in the State
15 of Oklahoma, for example, the Corporation Commission or any of
16 those specialized bodies that have rule-creating capacity,
17 they're always subject to judicial review, but they're not
18 necessarily subject to legislative powers. They have their
19 own little area that they operate in exclusively. That's my
20 thought, anyway. Any other thoughts on it?

21 MR. WICKLIFFE: How about the issue on the council
22 appointing members? You said two (2) are appointed by the
23 council?

24 MR. CENTER: Right.

25 MR. WICKLIFFE: Two (2) by the judicial review?

1 MR. CENTER: Chief.

2 QUESTION FROM THE FLOOR: The Chief.

3 MR. CENTER: And then those four appoint one.

4 MR. WICKLIFFE: Right. Now, would that be something
5 that needs to be thought about, also? If you're going to
6 create an independent commission, how do they get seated?
7 Would they have to be elected, or how are they seated?

8 MR. CENTER: No, I think probably one by the
9 council, one by the chief, and then you have a carry-over
10 commissioner to form three would give you a quorum to appoint
11 the other two (2). I don't really have any -- you know,
12 there's really not an issue of -- in my mind, there's not an
13 issue of the way the commission is set up now. It's pretty --
14 to me that two and two and then the four do the fifth is a
15 pretty fair system.

16 The only issue that was raised to me as one of the
17 commissioners, and I've advised several people that I would
18 try to get an answer, would be -- was this: The Rules
19 Committee is the council and the changes in the election law,
20 and the changes in any of the election law, and the Election
21 Commission being seated in time to make changes in problems
22 that arose in one of the elections that needed to be
23 addressed. If they're not seated in time, this can't get to
24 the Rules Committee, and that's the problem we had this year.
25 That's the problem we've got right now before the Judicial

1 Appeals Tribunal is because of these -- this Act is new and
2 it's -- I guess, as we would say, it's got some bugs in it.
3 It's new. It's being tested for the very first time. Mr.
4 Phillips knows more about how it come about than I do. But
5 there was an issue on -- that has arisen out of campaign
6 contributions in the election year of '95.

7 There was no rule or regulations in 1995 that could give
8 the commission any powers to do anything under excess monies
9 that were left over. So if that becomes an issue this time,
10 and it already has, it already has, and that's what brought
11 about this lawsuit that we're in right now. There was no
12 rules to govern the monies that was left over of the
13 candidates that intends to run again this next time. So the
14 issue was brought up: Does that count in this election year's
15 candidates; does that count in their aggregate amount? You
16 see, which in my opinion as a commissioner and reading the
17 Election Act of 7-97, the Election Act was not instituted
18 then. So if we have no law to govern something, then there's
19 no rule that the commission can make on it.

20 MR. KEEN: Uh-huh.

21 MR. CENTER: It's a moot issue, and we could not get
22 that to the Rules Committee.

23 MR. KEEN: Mr. Centers, let me change the topic just
24 a little bit. There's been brought up at previous meetings an
25 idea of instituting staggered elections, rather than having

1 all elected officials -- all seats come open for election
2 every four years. Would you be in favor of such a change?

3 MR. CENTER: I would be in favor of staggered
4 elections, yes. I think it would be more -- I think it would
5 be more beneficial in the -- I think it would be more
6 beneficial. I think it would be a more adequate form of
7 government than all or none.

8 MR. KEEN: Now, if the people voted for such a
9 change - now, I'm asking you with your experience on the
10 Election Commission - would that increase the work of the
11 Commission to where it would need to be a full-time
12 undertaking?

13 MR. CENTER: I don't -- I don't think it would
14 increase the work. I think -- I think the work that is right
15 there now at the commission, at the Election Commission, in my
16 opinion, you need a full-time commission because of the traffic
17 in and out and people registering, people that are deceased.
18 There's a lot of cleanup over there that's got to be done and
19 it's full-time. But in so far as your question, it might
20 increase a little. But I think what you would actually do,
21 Mr. Keen, in the overall cost, and I don't know how many of
22 you here know what the -- what you're looking at for a tribal
23 election. It's high. But with the new automated system, I
24 think it's better, it's safer, it's fair. This year will
25 probably be one of the best counts, counting elections, that

1 we're going to have, this coming year. We're looking at right
2 around \$390,000.00 a year.

3 I think that could be, if we went to a staggered-type
4 deal, I think that we could -- we could probably streamline.
5 After our Act is clarified and whatnot, I think it could be
6 streamlined and probably be cheaper on the Nation and turn
7 more monies loose for the people, in my opinion, on the cost
8 of it.

9 MR. KEEN: Well, I could see if the Commission was
10 continued as a full-time endeavor, then that would correct
11 this problem that you've already had in not being appointed in
12 time to submit changes to the Act to the council.

13 MR. CENTER: And if I might add, it's not the
14 council's fault that -- you know, with everything else that
15 they've got to do, it's not the council's fault that this
16 happens. It's really the conscientiousness of a Commission,
17 because the means and the ways and whatnot are there for them
18 to do it. It's there. The documentation, the whole thing is
19 there. Anybody that registered has to come through there.
20 And, you know, I don't know what it was in the past, but I do
21 not what it is now, and we do a lot of work outside of the
22 commission to try to get this thing straightened up. But it
23 could be more streamlined and it would be better for the
24 council. It would make their job easier and it would make the
25 commission's job a lot easier. And therefore, I think it

1 would, cost-wise, I think it would be cost effective to have a
2 full-time seated commission.

3 And I might say under the same rule, we do have rules in
4 the Act, what Mr. Phillips said, if a Commissioner is found
5 worthy of recall, I think the same procedure should apply to
6 him in the recall on a commissioner. Even though he's not
7 elected, I think it should apply to him.

8 MR. KEEN: Uh-huh.

9 MR. CENTER: On the recalling him.

10 MR. KEEN: Do we have any other questions for Mr.
11 Centers?

12 MR. WICKLIFFE: Talking about a staggered election,
13 are you talking about it being similar to the way it's done
14 with the State of Oklahoma, shorter terms for council members
15 like it is for the house?

16 MR. CENTER: Not shorter terms.

17 MR. WICKLIFFE: They run every two (2) years, you
18 know.

19 MR. CENTER: Not shorter terms, but the initial
20 start up of it -- the initial start up of it, there's going to
21 be -- you know, you're going to have somebody that's going to
22 serve two (2) years.

23 MR. KEEN: Or the other alternative is you're going
24 to have at least half of them serve six (6) years.

25 MR. CENTER: Or you're going to have some of them

1 serve six (6) years and --

2 MR. KEEN: You either shorten someone's term and
3 lengthen the other.

4 MR. CENTER: -- the other half to serve the four
5 years.

6 MR. WICKLIFFE: That right there would be something
7 to really, you know, get a hold of.

8 MR. CENTER: It's that initial punch that you're
9 going to have to work out.

10 MR. WICKLIFFE: That's it.

11 MR. CENTER: Now, if you done it in -- if you let
12 your council people run in two (2) year terms. But here
13 again, now, you're getting back into your election. You're
14 getting into your A.S. or automated election services that
15 we're going to be using out of Mexico, New Mexico. If we done
16 it every two (2) years, you're going to get -- you're talking
17 about say and do four council persons, four and four and four,
18 until you get up to your twelve. You're talking about an
19 enormous amount of money, three quarters of a million.

20 MR. KEEN: Is that annually, or for every election
21 you mean?

22 MR. CENTER: Every election is going to run you
23 about two hundred and ninety thousand dollars (\$290,000.00.)
24 Now, that's figuring in the total budget of the election
25 commission.

1 MR. KEEN: But it wouldn't be a full election, it
2 would just be --

3 MR. CENTER: It would be only council.

4 MR. KEEN: -- a limited election for certain seats.

5 MR. WICKLIFFE: Right, limited.

6 MR. KEEN: Every four years you would have the Chief
7 and Deputy Chief, but the odd years, the off year elections
8 would just go to a certain number of seats on the council.

9 MR. CENTER: That's right. That's what I'm saying,
10 you know, the initial start up of it would be -- and I think
11 this would be -- I don't know who's to answer that. It's
12 not --

13 MR. KEEN: Well, that falls on us.

14 MR. WICKLIFFE: That would be -- that would have to
15 be worked out.

16 MR. KEEN: Absolutely.

17 MR. WICKLIFFE: Worked on.

18 MR. KEEN: But every one that we spoke with so far
19 seems to be very supportive of the concept in general of
20 staggered terms.

21 MR. CENTER: I'm in support of -- if you're asking
22 me my opinion, I'm in support of staggered terms. And I think
23 your Election Commission would work better, and that's the
24 only one that I can speak for. I don't know about the other
25 commissions. Now, you know, Mr. Phillips has been around for

1 a while.

2 MR. WICKLIFFE: The cost, though, is not really
3 something, you know, to be concerned about if it improves the
4 government.

5 MR. CENTER: If it improves the government. But I
6 think there's a time and a point to where we need to take some
7 of this money, if we possibly can, and I think those of us
8 that cares needs to think about drilling a well for somebody,
9 putting a bathroom in for an old couple, you know, and maybe
10 education for our children in their education system. I think
11 that those of us that are fortunate enough to --

12 MR. KEEN: Well, there's always, you know, budgetary
13 considerations in government in general, but I think when
14 we're talking about framing the Constitution, we've got to be
15 concerned with putting together the best possible system of
16 government and then rely on that system --

17 MR. CENTER: Right.

18 MR. KEEN: -- to provide for the needs of the
19 people.

20 MR. WICKLIFFE: I think it will.

21 MR. CENTER: I think, in my opinion, it would be
22 a better form of government under staggered terms.

23 MR. WICKLIFFE: And usually a good form of
24 government will provide you excellent, you know, funding.

25 MR. CENTER: That's exactly right.

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss.
COUNTY OF ADAIR)

I, Paula D. Louderback, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that on Monday, October 12, 1998, at the Westville High School Auditorium, Westville, Oklahoma, the above proceedings were taken by me. The proceedings were reduced to writing by me in stenograph and thereafter transcribed by me, and is fully and accurately set forth in the preceding 20 pages.

I do further certify that I am not related to nor attorney for any of the said parties, nor otherwise interested in the event of said action.

WITNESS my hand this 23rd day of October, 1998.

Paula D. Louderback
Certified Shorthand Reporter

