CHEROKEE NATION ELECTION COMMISSION
SPECIAL MEETING
ELECTION SERVICES MEETING ROOM
JUNE 15, 2015 – MINUTES

THE MEETING OF THE ELECTION COMMISSION WAS CALLED TO ORDER AT 4:18 PM ROLL CALL WAS TAKEN AND A QUORUM WAS ESTABLISHED.

COMMISSION: BILL HORTON, CHAIRMAN
TERESA HART, VICE CHAIRPERSON
MARTHA CALICO, SECRETARY-TREASURER
SHAWNA CALICO, COMMISSIONER
CAROLYN ALLEN, COMMISSIONER

COMMISSION ATTORNEY: HARVEY CHAFFIN

COMMISSION STAFF: KEELI DUNCAN, CONNIE PARNELL

DISCUSSION WAS HELD REGARDING THE "CARTER COMMISSION" TO OBSERVE THE ELECTION. ATTRONEY CHAFFIN DISCUSSED THAT SOMEONE FROM THE CARTER COMMISSION HAD CONTACTED HIM WITH CONCERNS ABOUT THE 2015 ELECTION OVER HAVE NEW VOTING MACHINES AND OFFERED TO COME AN OBSERVE IF INVITED. CHAIRMAN HORTON STATED HE HAD BEEN CONTACTED PREVIOUSLY ABOUT THREE WEEKS AGO BY A REPRESENTATIVE AND THAT HE AND MS. PARNELL BOTH SPOKE TO THAT SAME PERSON. MS. PARNELL DISCUSSED THE CONVERSATION SHE HAD WITH THE REPRESENTATIVE. THE TWO CONCERNS THAT WERE PRESENTED TO THEM FROM A CONCERNED CITIZEN WERE:

1. THE POLLING PRECINCTS HAD BEEN CHANGED
2. THE VOTING MACHINES WERE NEW MACHINES

MS. PARNELL STATED AT THE CONCLUSION OF THE CONVERSATION THE REPRESENTATIVE EXPRESSED SHE DID NOT SEE ANY CONCERNS HERE BUT OFFERED TO COME IF INVITED TO DO SO. CAROLYN ALLEN COMMENTED THAT THE CHEROKEE NATION IS A SOVEREIGN NATION AND THE ELECTION COMMISSION IS AN INDEPENDENT COMMISSION, EXPRESSING THE ELECTION COMMISSION IS CONFIDENT WE CAN HOLD A SUCCESSFUL ELECTION AND THAT WE ARE FULLY CAPABLE OF TAKING CARE OF THE 2015 ELECTION WITHOUT AN OUSIDE SOURCE, AND WE SEE TO MANY OUTSIDERS TRYING TO RUN THE BUSINESS OF CHEROKEE NATION. A MOTION WAS MADE BY CAROLYN ALLEN AND SECONDED BY SHAWNA CALICO THAT THERE WAS NO NEED TO INVITE THE CARTER COMMISSION TO COME IN TO BE PRESENT FOR THE 2015 CHEROKEE NATION ELECTIONS. MOTION CARRIED

BILL HORTON___

TERESA HART___YES
MARTHA CALICO___YES
SHAWNA CALICO___YES
CAROLYN ALLEN___YES

DISCUSSION WAS HELD CONCERING THE ATTORNEY GENERAL'S OPINION REGARDING ABSENTEE BALLOT MAILINGS. ATTACHMENT #1
ATTORNEY CHAFFIN REPORTED THAT A CHEROKEE NATION OFFICE HAD COLLECTED VOTER REGISTRATION FORMS AND ABSENTEE BALLOT REQUESTS FROM AT-LARGE CITIZENS AT COMMUNITY GATHERINGS IN APRIL, 2015 AND JUNE 11, 2015, IT WAS DISCOVERED THAT 9 ABSENTEE BALLOT REQUEST FORMS RECEIVED AT EVENTS IN CALIFORNIA AND WASHINGTON HAD BEEN MISPLACED AND WERE NOT TIMELY SUBMITTED TO THE ELECTION COMMISSION PRIOR TO THE MAY 8, 2015 DEADLINE.
THE ELECTION COMMISSION FOUND THAT OF THOSE 9 ABSENTEE REQUESTS, TWO WERE NOT REGISTERED AND ONE HAD REQUESTED AN ABSENTEE BALLOT BY SENDING IN A SECOND REQUEST TO THE ELECTION OFFICE. THE ELECTION COMMISSION WAS GIVEN AN ATTORNEY GENERAL'S OPINION ON THIS ISSUE, CONCLUDING THAT THESE SIX VOTERS' ABSENTEE BALLOT REQUESTS SHOULD BE DEEMED AS RECEIVED UPON SUMISSION TO THE REPRESENTATIVES OF THE CHEROKEE NATION OFFICE AND BALLOTS SHOULD BE ISSUED ACCORDINGLY. A MOTION WAS MADE BY CAROLYN ALLEN AND SECONDED BY SHAWNA CALICO TO SEND BALLOTS TO THESE SIX IN QUESTION, STATING THE OFFICIAL OPINION OF THE ATTORNEY GENERAL IS THE LAW THAT WE MUST ABIDE BY AT THE PRESENT TIME UNLESS THE COURT EXPRESSES OTHERWISE. MOTION CARRIED.
BILL HORTON_____
TERESA HART____YES
MARTHA CALICO____YES
SHAWNA CALICO____YES
CAROLYN ALLEN____YES

A MOTION WAS MADE BY SHAWNA CALICO AND SECONDED BY CAROLYN ALLEN TO GO INTO EXECUTIVE SESSION AT 4:35 PM. MOTION CARRIED.
BILL HORTON_____
TERESA HART____YES
MARTHA CALICO____YES
SHAWNA CALICO____YES
CAROLYN ALLEN____YES

A MOTION WAS MADE BY SHAWNA CALICO AND SECONDED BY CAROLYN ALLEN TO RECONVENE THE MEETING AT 5:00 PM. MOTION CARRIED.
BILL HORTON_____
TERESA HART____YES
MARTHA CALICO____YES

SHAWNA CALICO____YES
CAROLYN ALLEN____YES

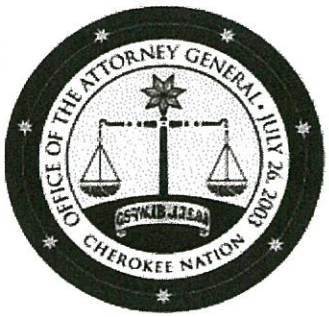
CHAIRMAN HORTON REPORTED THERE WAS NOTHING TO REPORT FROM EXECUTIVE SESSION.

THERE BEING NO FURTHER BUSINESS CONDUCTED A MOTION WAS MADE BY SHAWNA CALICO TO ADJOURN THE MEETING AT 5:00 PM. MOTION CARRIED.

Martha Calico

MARTHA CALICO, SECRETARY-TREASURER

attachment #1 - June 15, 2015 Minutes



CHEROKEE NATION
OFFICE OF THE ATTORNEY GENERAL

P.O. Box 948
Tahlequah, OK 74465-0948
918-453-5000

Todd Hembree
Attorney General

OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Charles Hoskin, Jr., Secretary of State for the Cherokee Nation

Opinion Number: 2015-CNAG-03

Date Decided: June 15, 2015

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

1. **If a Cherokee Nation citizen submits a request for an absentee ballot to a Cherokee Nation employee who is collecting absentee ballot requests at a Cherokee Nation sponsored community event, what remedy, if any, is available to that citizen if the request is not timely submitted to the election commission?**

For the reasons discussed below it is the opinion of the Attorney General's Office that absentee ballot request forms submitted by the Cherokee Nation citizens in question should be deemed by the Cherokee Nation Election Commission as having been received upon submission to the Project 320K representatives and that absentee ballots should be provided accordingly.

BACKGROUND

Project 320K is a voter registration initiative undertaken by the Cherokee Nation Office of Government Relations. Project 320K serves the purpose of registering new Cherokee voters as well as providing and collecting absentee ballot requests from Cherokee citizens at various community gatherings throughout the Cherokee Nation and the United States.

In April of 2015, the Cherokee Nation hosted Project 320K events across the country. As customary at these events, Project 320K representatives collected voter registration and absentee ballot requests from at-large citizens and returned the same to the Election Commission. Project 320K staff forwards these voter registration forms and absentee ballot requests to the Election Commission for processing upon their return.

On June 11, 2015, it was discovered that nine (9) absentee ballot request forms received at events in California and Washington, D.C. had been erroneously misplaced by a Project 320K representative. As a result, these 9 absentee ballot request forms were not timely submitted to the Cherokee Nation Election Commission prior to the May 8, 2015 deadline. Upon learning of the mistake, a representative of the Cherokee Nation presented the nine absentee ballot requests to the Election Commission for processing. Of these nine requests, the Election Commission has since determined that two (2) were ineligible to vote and one (1) has subsequently received an

absentee ballot upon request. As a result, the Election Commission has declined to provide absentee ballots to six (6) of the original applicants in question by reason of untimely filing. The six individuals who have been denied an absentee ballot by the Election Commission assert that their right to vote is being unfairly impaired.

ANALYSIS

From the outset, it should be noted that the right to vote is a fundamental right.[1] 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. Towards such an end, the Cherokee Nation Election Commission must deem the absentee ballot requests in question as having been received upon delivery to the Project 320K representatives.

The Cherokee Nation Election Code is codified at Title 26 of the Cherokee Nation Code Annotated and its most recent comprehensive amendments were enacted pursuant to Legislative Act 14-04 in February of 2014. The Election Code was promulgated to provide a platform for open access to voting by Cherokee citizens while also securing integrity in the voting process. Absentee voting is authorized by 26 C.N.C.A. § 71, *et seq.*, upon "timely written request by a registered voter of Cherokee Nation in compliance with the requirements of this article." Registered voters are permitted to request absentee ballots "in mail or in person at the Election Services Office from the first Monday in February until the second Friday in May of the election year." *Id.* at § 73. If the request is rejected for any reason, such as has been described above, the Election Commission is to "immediately notify said voter in writing of the rejection and the reason therefore." *Id.* at § 74.

In the matter at hand, the six voters' absentee ballot requests should be deemed as received upon submission to representatives of the Project 320K initiative and ballots should be issued accordingly. At the time of submission, these representatives were employees of the Cherokee Nation operating within the scope of their employment duties. In submitting their respective absentee ballot requests, these voters operated under the reasonable belief that their requests had been timely submitted to the Nation. Longstanding presumptions of law have held that where an individual acts reasonably and with due diligence, legally operative documents are presumptively received upon submission.[2] Such reasoning should govern in this instance and these voters' respective requests should be deemed as received by the Election Commission upon submission to Project 320K representatives and absentee ballots should be issued in accordance with Cherokee law. Inasmuch, unless otherwise disqualified, the Election Commission should provide absentee ballots to these six applicants upon request.

John C. Young
Assistant Attorney General
Cherokee Nation

Todd Hembree
Attorney General
Cherokee Nation

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[1] See *Cornsilk v. Tribal Council, JAT 96-15.* See generally *Reynolds v. Sims*, 377 U.S. 533 (1964).

[2] See *Rosenthal v. Walker*, 4 S.Ct. 382 (1884).