

## Rebuttal From Councilors to Chief's Political Opinion

Seven Cherokee Councilors asked to reflect, clarify and elaborate where necessary to accusations made in an August Cherokee Phoenix article entitled Opinion by Chad Smith. The seven recently named Chief Smith as a party in a Federal Securities Fraud lawsuit where officials estimate Cherokee Nation Industries, (CNI) will write off a six million dollar loss only a year after the inception of the venture.

Councilors filing the suit constituted one less than a majority of the full Council. Their respective titles exemplify they are the backbone of the legislative branch in leadership positions where each was elected by a majority of their fellow Councilors. Joe Crittenden, of Adair County, Chairman of Health and Co-Chair of Rules, David Thornton of Sequoyah County, Co-Chair of Resources, Bill John Baker of Cherokee County, Co-Chair of Executive and Finance, Linda O'Leary of Delaware County, Chair of Executive and Finance and Co-Chair of Health, Melvina Shotpouch of Delaware County Chair of Community Services, Johnny Keener of Mayes County, Chair of Language, History and Culture and Chuck Hoskin of Craig County, Chairman of Education.

Last month Chief Smith used the tribal newspaper as his forum to paint a picture that Councilors filing a lawsuit had done so simply for political gain. We regret that he has burdened citizens with such rhetoric and hype. Yet the tactics within his opinion help readers to understand what Councilors have endured this entire term. Chief Smith with his slate Council has repeatedly tried to strong arm legislation through Council and has killed legislation that would give us better checks and balances throughout our government. We have been one less than a majority yet we stand strong as the peoples' eyes watching over the money and operations of the tribe.

Chief Smith chose to use our newspaper to promote his innocence and minimize a serious situation discovered within the finances of our Nation. He encouraged readers to believe that the entire ordeal is only politics and presented a multitude of excuses and possibilities he wished Councilors had chosen rather than filing the case in federal court. The Chief, who is an attorney, suggests Council should have filed the case in tribal court yet federal court is the only court of proper jurisdiction under the Security and Exchange Act.

Chief Smith states that he does not sit on the CNI Board of Directors. However he is named as an Advisory Board member along with Benny Dixon who is also named in the suit. The Chief is also the individual authorized to vote the stock which created these losses.

Chief Smith has twisted the facts to blame the Councilors who exposed this corruption for any problems that may arise as natural consequence or bi product of corruption. We regret that he chose to ridicule and use a choice of words such as "plagued by Councilors micromanaging every decision." This is less than becoming for a leader of a tribe with more than 250,000 members. He attempts to intimidate and abuse Councilors for not resolving a badly hemorrhaging financial situation in a less politically damaging manner to him. But we suggest Chief Smith should have considered all of the consequences to the tribe and everyone concerned before he led us so far into the abyss.

CNI has had many problems through the years but never to the magnitude as we have seen in the past seven years. Council first had to bale out CNI when a glutton of

obsolete inventory made the company insolvent in 2002. Council approved a \$14 million line of credit guaranteed by the BIA, to prevent massive layoffs but NOT for high risk investments. Now only four years later, if the BIA should revoke their 80% guarantee on that loan, we will have to pledge Cherokee assets to prevent the bank from calling the loan and bankrupting CNI. This is all because of GEG and surrounding investments made under the watch of Chief Smith's administration. Ironically Chief Smith would have you believe we Councilors, are at fault for reacting to the financial reports uncovering highly questionable investments.

Anyone finding himself a defendant in federal court on charges of securities fraud has serious problems. Just ask Martha Stewart. We want to assure every Cherokee that should anyone within Cherokee Nation operations be discovered to be incompetent or in breach of their fiduciary duties, timely and proper recourse will be taken to avoid further financial damage to the Cherokee people.

Today Council is the watchdog over almost a billion dollar a year operation. Anyone, especially in a leadership role be it Chief, a CEO, Department Heads or Councilors involved with Cherokee Nation funds inherits certain fiduciary responsibilities and duties. A primary responsibility of the Council is to be the check and balance of oversight to assure the Cherokee peoples' money is being properly spent.

A duty inherent in politics is for politicians to police other politicians and expose internal corruption. Chief Smith fails to take a responsible position between what is right or wrong. Instead he uses the forum to attempt to convince readers "it is just politics." If a politician fails in their fiduciary duties or are caught participating in schemes to launder money, they must be held accountable and made to pay restitution and/or go to jail. An investment that has gone so bad, that U.S. Senators and Congressmen have urged the SEC to investigate it, can not be defended by screaming "it is just politics."

Neither will these Councilors accept an excuse that all of this occurred by just another "bad business decision." A "bad business decision" can not explain investing over \$4 million in a company that only has \$350,000 dollars in assets, all of which are intangible and over six million in debt. The evidence of improprieties surrounding the CNI ventures is overwhelming. Most recently we discovered that CNI invested an additional \$1 million dollars into a company called Cherokee Idling Solutions where we found the principle owners are the same as the owners who were in GEG. According to our sources Chief Smith decided that the tribe would not continue in the direction of Idling Solutions after the million dollar expenditure. However, Jim Majewski and Benny Dixon chose to pursue their own personal venture into an Idling Solutions Company.

Fiduciary is defined as, a person, such as an investment manager or the executor of an estate, or an organization, such as a bank, entrusted with the property of another party and in whose best interests the fiduciary is expected to act when holding, investing, or otherwise using that party's property.

Whenever a politician is accused in such a scandal, typically a public relation team goes into what is known as damage control. A desperate attempt begins to neutralize and silence the snowball of news coverage. Often a common political tactic used is

called, "shooting the messenger." Chief Smith exercises this age old tactic while exhibiting a multitude of classic defense mechanisms upon which psychologists who have written volumes could deduce much. Blame, deception, minimizing, exaggeration, projection, distortion, manipulation and denial are some of the more obvious exhibited. Chief Smith has access to public relations and resources using Cherokee peoples' money for his own defense.

Regretfully Chief Smith did not take the opportunity to present any explanation for the mismanagement of funds or any evidence of his innocence, which would exclude him from further scrutiny.

He chose instead to use the forum only to make excuses and blame others to distract away from the issues in question. Chief Smith is attempting by everything within his power to take a financial disaster that has cost the Cherokee people over six million dollars and discount it by screaming "it is just politics" while blasting Councilors who have questioned his honesty. Councilors hope this situation does not prove to be only the tip of an iceberg. However this term has been a battle getting access to sufficient financials to adequately discern facts involving certain areas of the operations.

Chief Smith went even so far as to make false statements regarding the financing for the construction of the health clinics this year. The credit rating service has not even issued our credit score for the tribe as of the date of this article. Such untruths should not be tolerated especially in such a blatant attempt to deceive the Cherokee people.

We feel one thing worth mentioning is that to date, not one of Chief Smith's political slate has chosen to join in the federal suit including Adair County Councilor Jackie Bob Martin who also sits on the CNI advisory Board in the same capacity as Councilors Crittenden and O'Leary.

We all agree with Councilor Thornton who cut to the chase during a recent Committee meeting stating, "The only thing that makes this situation political is that there are politicians involved. What makes it serious to me is that there may be some corrupt politicians involved in this. It is my duty, by the oath I swore and the oversight responsibility I accepted when I became a Councilor that I get to the bottom of any wrongful expenditure of the Cherokee peoples' money. But I want you to know that personally, I deplore corrupt politicians."

Councilors just learned that the tribe will pay for the attorneys of Chief Smith, Jim Majewski and Benny Dixon. Ironically Councilors have been blocked from tribal funds by a suit filed in tribal court by Diane Hammons. According to Chief Smith she serves at his pleasure as both General Council to the Chief and Attorney General, which is also the prosecutor for the tribe. The executive branch has effectively forced Councilors, the legislative branch, to go outside the tribe soliciting for money to pay our attorney. Also noting that the Chief's political slate recently voted against authorizing Todd Hembree, the Council staff attorney, to use any legal means possible in an effort to recoup the Cherokee peoples' moneys.

We welcome the support and assistance from others in our pursuit for justice and accountability and stand together in the quest for a government of, by and for the Cherokee people.

Wado,  
Councilors

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## AG files suit against Councilors

Cherokee Constitution's separation of powers and attorney general provisions, quorum requirements, Freedom of Information Act prohibitions with regard to meetings and notices, and the statutory requirements for filing lawsuits on behalf of the Cherokee Nation with regard to "substantial assets."

"The individuals who filed a federal lawsuit against three individuals on behalf of the Cherokee Nation had no legal authority to do so," said Hammons. "They have acted outside their authority in claiming to represent the Cherokee Nation and outside the limits the Constitution has placed on these individuals in their roles as council members."

Hammons said her job as attorney general for the tribe, as defined by its Constitution is to "represent the Cherokee Nation in all criminal cases in the courts of the Cherokee Nation and in all civil actions wherein the Cherokee Nation is named as a party."

"By filing the lawsuit on behalf of the Cherokee Nation, these individuals directly violated the Constitution," said Hammons. "The attorney general is independent, appointed by the principal chief and approved by the tribal council to make sure that no one is above the law. It is my job to uphold [the laws] of the Cherokee Nation regardless of who is involved."

Councilors filed suit in U.S. District Court in June, seeking to regain \$2.5 million in tribal funds spent on a questionable investment made by CNI in Global Energy Group.

Following a review of the investment requested by O'Leary and Baker, chairman and co-chairman of the tribe's finance committee, Doug Evans, CFO and director of financial oversight for the council, turned his findings regarding the investment over to the Securities and Exchange Commission, requesting further investigation.

In the most recent development, Hammons is seeking a declaratory judgment ordering the seven councilors to amend their complaint in the federal suit removing the phrase "on behalf of the Cherokee Nation," because the councilors lacked the authority to file the suit, and for councilors to pay any and all costs associated with the prosecution of the federal suit, as well as restitution to the tribe for "all Cherokee Nation funds, if any, paid by the nation for the filing and prosecution of the federal lawsuit."

O'Leary and Baker felt they had no choice but to file the suit following Evans' review, and believe the administration is treating the situation as a political football.

"If we had not filed a federal suit in the first place, our hands would've been tied when it came to addressing Chad Smith's actions," said O'Leary. "This suit by the attorney general is meant to draw attention away from the real problem at hand, which is the fraudulent investment of the people's money in a company with no assets."

Hammons stands firm in her charge that the councilors acted beyond the scope of their authority.

"The ends do not justify the means," said Hammons. "The Cherokee Nation Constitution and laws passed by the tribal council deal with how civil lawsuits can be filed on behalf of the nation, and by whom," said Hammons. "If the Cherokee Nation is going to spend money on a lawsuit, it should be approved as outlined clearly in Cherokee Nation law, rather than at the whim of a minority of the council members."

Baker believes Smith, Hammons and other members of the administration have done just exactly what they are accusing the councilors of doing.

"They say we're just doing this in the name of politics," said Baker. "Yet, they're guilty of the act they're accusing us of committing: Politicizing some very serious things that need to be investigated and dealt with."

Smith maintains the councilors have no tribal authority to sue him on behalf of the tribe.

Court documents filed by Hammons quotes tribal statutes requiring "any litigation brought on behalf of the Cherokee Nation against any non-Cherokee Nation entity in any court or jurisdiction, must be authorized by the principal chief and ratified by the tribal council prior to the filing of said litigation, when the suit involves the sovereignty of the Cherokee Nation or substantial assets."

Hammons charges that at no time did the councilors put this to a vote in an open meeting of the full council, thus violating the tribe's constitution.

Hammons charges state the councilors' suit was filed against three individuals - Smith, in his individual capacity, and Majewski and Dixon, employees of the Cherokee Nation. The allegation against Smith is for "acts conducted by him in his official capacity" and against a nation entity. However, Hammons states it is unclear whether Majewski and Dixon, tribal employees, are included in the suit under their official capacity within the tribe, or as individuals.

Hammons is not questioning the content of the federal suit, only the circumstances under which it was filed, saying, "our laws exist to safeguard us from people saying they represent the Cherokee Nation's interest when they do not and we must uphold those laws. Further, we have to make sure that nation funds are not committed to actions that are not authorized by statute."

O'Leary believes the effort was set up as subterfuge by the chief.

"Smith's administration is trying to keep us from funding our suit because of what's at stake with his credibility," she said. "If he can prevent us from receiving funding, he thinks it won't make it to court."

Baker, who was out of town at the time the suit was filed, had heard the attorney general was preparing to take them to court, and was clearly disappointed in the decision, as evidenced in an interview Thursday afternoon.

"We're trying to get the peoples' money back and the administration is politicizing our effort by refusing to pay for the attorney," he said. "This is persecution by policy, and I think the people will see it as just that."

Baker feels too many members of the council refuse to stand up against what he perceives as the chief's agenda.

"To paraphrase, 'power corrupts, and absolute power corrupts absolutely,' he said. "Just look at the council voting records. It doesn't take a rocket scientist to figure out who won't go against the chief. Those councilors have given Chad a false sense of security - a euphoria that makes him feel like he can do anything. He may not know it, but those councilors who never vote against him may be his own worst enemy by creating that sense of security."

To date Councilors filing the suit have not used any tribal money but have found financial support from tribal citizens. Cherokee Nation authorities however have stated the tribe will be paying for Majewski, Dixon and Smith's attorneys.

David Thornton said, "We simply filed the suit to stop the profuse bleeding of millions of dollars out of the Cherokee Nation into GEG and several suspicious subsidiaries that were spin offs of the original deal. It was the most responsible and immediate method to throw on the brakes in an emergency situation where millions more could be spent with a decision by three people."

The seriousness of this situation calls for a full and proper investigation into all of these questionable transactions. What we are seeing is that the Cherokee Nation has no mechanism to investigate or prosecute when there is a serious situation involving the Chief. I am astonished that our new AG and Prosecutor decided we are the bad guys and hasn't shown any indication that she will investigate and prosecute the corruption we have discovered. Her choice to sue officials of the Cherokee Nation who are trying to

stop this mess from getting worse is just unbelievable," Thornton stated.

Evidence shows that Smith knew of the investment when it was first made and gave retroactive permission to Majewski to go forward without meeting the conditions set forth by the Cherokee Nation Businesses Board, (CNB), and without final CNI Board approval. CNB is a new board created by the Smith administration to search for business ventures to invest tribal gaming profits. CNB is presently costing the tribe over a \$100,000 a month in losses to operate and has no means but the monthly injection of tribal dollars to support the top heavy operation of high salaried officials.

Crittenden, Chair of Health and Co-Chair of Rules who also sits as an Advisory Board Member on CNI stated, "I think there is an expensive lesson in this GEG deal. Council does not have an adequate system in place to fulfill their constitutional duty of oversight. If Council can't effectively watch the bank in this government, it's going to cost us more than anyone can imagine. Any government that lacks good checks and balances usually ends up being a cesspool of corruption and waste." he added.

Crittenden said, "It should be obvious that Council needs more than one accountant and attorney if 17 people are going to honestly try to watch over a billion dollar a year operation while creating law and a better government. I am concerned that this is only the tip of the iceberg considering what we're looking at on some of the other deals we're into. We better hire some more professionals in our immediate staff. When there are deals this big, which can go this bad before we can even get them stopped, we can't afford not to build a team of professionals to help to watch this monster." Crittenden added.

In the July E&F Meeting Bill John Baker made a motion to authorize Council's attorney Todd Hembree to use any legal means possible to recoup the Cherokee peoples' money in the GEG \$6 million scandal. Bill John Baker explained that time was of the essence in attempting to recoup any money and urged fellow Councilors to support the measure out of duty.

During the hour long discussion CNI Chief Executive Officer, (CFO), Tom Reynolds, told Councilors, "If he had been CFO at the time of the transaction and it came across his desk he would have thrown it in the trash can." Reynolds said, "I wouldn't have put a dime into this deal." Reynolds assured Council that as of the day of the E&F meeting all sources of funds had been stopped from any further flow into the investment.

The Chief's allies voted down having their attorney begin using every legal means possible to recoup the Cherokee Peoples' money.

### Voting NOT to authorize the Council's Attorney to recoup the Peoples' money:

- Jackie Bob Martin** - Stilwell who is also an Advisory Board Member on CNI,
- Merideth Swimmer Frailey** - Mayes County an attorney who formally served as CEO of CNI,
- Cara Cowan Watts** - Roger County being questioned in an FBI investigation where a Rogers County Commissioner was indicted on 9 counts including money laundering,
- Audrey Smoke Conners** - Cherokee County,
- Phylis Yargee** - Sequoyah County,
- Don Garven** - Muskogee County,
- Bill Johnson** - Tulsa County,
- Taylor Keen** - at large ?
- Jack Baker** - at large ?

### Voting YES to authorize any legal means to recoup Cherokee Peoples' money:

- Bill John Baker** - Cherokee County
- Joe Crittenden** - Adair County
- David Thornton** - Sequoyah County
- Linda Hughes O'Leary** - Delaware County
- Melvina Shotpouch** - Delaware County
- Johnny Keener** - Mayes County
- Chuck Hoskin** - Craig County

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