

Jon Velie letter to Scott Keep--2003

July 21, 2003

Mr. Scott Keep
Attorney for the Bureau of Indian Affairs
1849 C Northwest
Washington, D.C. 20240
Via Mail and Facsimile: 202-208-3490

Re: Certification and recognition of Cherokee Nation of Oklahoma election results in light of Cherokee Freedmen inability to participate

Dear Mr. Keep:

This firm represents Marilyn Vann, Ronald Moon, Donald Moon and Hattie Cullors. These individuals are direct descendants of individuals on the Cherokee Freedmen Dawes Rolls. Cherokee Freedmen are Cherokees of African Descent that were recognized by the Cherokee Nation and the United States as full members of the Cherokee Nation under the Treaty of 1866.

I was advised by Ms. Aurene Martin that you and Charles Babst were the legal counsel handling the issues surrounding the matter of certification of the Cherokee Nation of Oklahoma election. As you may know, I wrote a letter to Ms. Martin addressing the issue that the Cherokee Freedmen were not entitled to vote in the recent election. This action is in direct violation of the Treaty of 1866 and the interpretation of a very similar treaty with the Seminoles by Federal Judges Kotar-Kotelly and Walton in actions that we were both involved in. I have attached a copy of that letter.

Ms. Martin advised me today that the individuals that desired the recognition of the election based their position on Wheeler v. U.S. and invited us to draft our position on that issue for your review.

Please excuse the abbreviated position statement. We understand that a decision on certification may be determined at any time and an immediate statement from the Cherokee Freedmen is necessary. As we have not seen the brief of the parties seeking certification, please accept this language as an aid to your determination regarding the Wheeler case and not a full brief on the position of the Cherokee Freedmen or a response to any party's position. We reserve the right to fully brief our position in the event litigation results.

Wheeler v. U.S. et, al. 811 F. 2d. 549 (1987) holds, "that Indian Tribes have a right to self-government, and the Federal Government encourages tribes to exercise that right. Consequently, while the Department may be required by statute or tribal law to act in intertribal matters, it should act so as to avoid any unnecessary interference with a tribe's right to self government."

While we agree that the Federal government should not unnecessarily interferes with a tribe's right to self-government, upholding the Treaty of 1866 granting the Cherokee Freedmen citizenship in the Cherokee Tribe is not merely unnecessary interference. Further, upholding the Freedmen's right to vote in tribal elections is the position the BIA took in the Seminole cases. These positions were supported by two Federal Judges and are directly on point with the Cherokee situation.

Another federal law that may require the involvement of the Department in the election is the Principal Chiefs Act of 1970, which states that certain procedures must be approved by the Department regarding elections. The Cherokee Nation never submitted the procedures disenfranchising the Cherokee Freedmen right to vote for Department approval, therefore, the Department never approved the procedures. The procedures disenfranchising the vote for the Cherokee citizens of African descent are in direct violation of the Treaty of 1866 and the recent Seminole cases.

I understand that the BIA may take the position that the election for Chief may be certified and recognized but not the election on the constitutional issue. These issues cannot and should not be distinguished. The election is fatally flawed because some citizens of the Cherokee Nation were not permitted to vote, therefore, no part of the election is proper. This is not merely an inter-tribal dispute but a direct violation of Treaty rights that protect the citizenship of the Cherokee of African descent.

The BIA must uphold its trust responsibilities to the Cherokee Nation, no matter what improper position the tribe takes. Seminole Nation v. United States, 316 U.S. 286, 297, 62 S. Ct. 1049, 1055 (1942) (Payment of funds to a faithless trustee would be a "clear breach of the Government's fiduciary obligation" and would be actionable); United States v. Mitchell, 643 U.S. 206, 224-28, 103 S. Ct. 2961, 2971-73 (1983) Failure of U.S. trust obligations gives rise to cause of action against trustee.

The Bureau of Indian Affairs has a fiduciary duty to protect Cherokee citizens against the Tribal Government's treaty violation in the same way the Bureau would have the fiduciary duty to protect the citizens against any other type of illegal act the Cherokee government performed against it's citizens. If the Chief or Council of the Tribe embezzled Federal Trust Funds the Bureau would not think twice about taking action. In this case, the stripping of a citizen's right to vote for who leads the Nation or whether the constitution is altered is a theft of the most valued right a Cherokee citizen can possess. The Cherokee Nation's action has committed the highest form of impropriety it can undertake and stripped itself from being a democracy. Denial of the right to fair elections, the right to chose leaders and ratification of the treatise in which you are governed is a fundamental right all Cherokee enjoy and are of much higher value than misappropriation of funds. Yet the BIA takes pause on whether to take action.

The Cherokee Freedmen listed above respectfully request that the BIA uphold its fiduciary duty to protect their Federally protected right to citizenship in the Cherokee Nation of Oklahoma including their right to vote in elections. To uphold this right, the BIA must take the same course of action it did with the Seminole Nation and demand lawful elections that provide all citizens the right to participate.

If there is any more information I may provide you so that you can adequately examine this issue please contact me.

Sincerely,
Jon Velie

Cc: Mr. Charles Babst
BIA Field Solicitor's Office
918-669-7736

Ms. Aurene Martin
Acting Secretary of Indian Affairs
202-208-6334

UKB gaming funds to go for clothing

By Staff Reports
7/14/2007

TAHLEQUAH -- The United Keetoowah Band of Cherokee Indians will distribute clothing assistance vouchers financed with tribal gaming dividends.

Eligible applicants must meet income guidelines, including proof of enrollment on school letterhead, proof of income and a current tribal card, officials said.

Income eligibility is 150 percent of federal guidelines. Children must be exclusive members of the UKB no later than July 7, 2007, to qualify.

Children in kindergarten through eighth grade will receive \$75 vouchers for school supplies and clothing. Students in grades nine through 12 will receive \$100.

Applications will be taken and approved July 23-28 in the UKB district office.

For more information, call Bryan Shade at (918) 456-8698 or toll-free at (800) 259-0093.

Tribe can change constitution, not freedmen treaty, BIA says

By JIM MYERS World Washington Bureau
8/11/2007

WASHINGTON -- The head of the Bureau of Indian Affairs endorsed the Cherokee Nation's right to amend its constitution without federal approval, but he made it clear Friday that the action does nothing to alter the tribal membership of freedmen descendants.

"By approving this constitutional amendment, it doesn't change the freedmen's status," Carl Artman said. "The 1866 treaty between the United States and the Cherokee Nation affirms their rights.

"Until the treaty of 1866 is abrogated, the freedmen will remain members of the tribe."

Making his comments during an interview, Artman said his agency would consider taking the Cherokee Nation to court to enforce that treaty if the tribe once again moved to expel certain descendants of former slaves from its membership rolls.

"I am not sure that court action is the way to go," he said. "We would look at all of our options."

Artman's Aug. 9 letter to the tribe, which announced his approval of the constitutional change taking the federal government out of its amendment process and his comments about that decision, stressed that the tribe still must follow the law.

"In approving the amendment, it affirmed tribal sovereignty," Artman said, adding that tribal sovereignty, just like the sovereignty of the federal government or a state government, can be limited by a constitution.

"It can also be limited by treaties, and in this case, sovereignty is limited, guided by the 1866 treaty," he said.

Cherokee officials said Artman's approval ends an eight-year "struggle" to remove the federal agency from the tribe's constitutional process.

Cherokee Nation voters passed a constitutional amendment removing federal oversight on June 23.

Artman and Principal Chief Chad Smith clashed over a similar vote in 2003, forcing the chief to set another vote.

Smith said Friday that Artman's approval of the June 23 vote validates self-governance for tribes.

"We do appreciate that they (the BIA) acknowledge what our own courts have already held to be true -- that the Cherokee people are the only people with the right to decide what our constitution says," Smith said.

Meredith Frailey, the speaker of the Cherokee Nation Tribal Council, said federal approval affirms that the tribe

is capable of making fundamental government decisions.

"The BIA has told us what we already knew -- the Cherokee people do not need a federal bureaucracy micromanaging our nation," she said.

Artman's decisions on the Cherokee Nation, specifically those pertaining to freedmen descendants, are being watched closely by members of Congress.

U.S. Rep. Diane Watson, D-Calif., a member of the Congressional Black Caucus and perhaps the tribe's most vocal congressional critic, is not ready to let the matter drop.

"Assistant Secretary Artman's decision to approve the Cherokee Nation's amended constitution is the wrong message at the wrong time," she said. "It demonstrates the need for immediate and aggressive congressional oversight of this matter."

Artman said he did not see the point of holding a congressional hearing.

"Oversight of what?" he asked. "The freedmen always have been part of the Cherokee Nation, and they still are." pu, Also --- World staff writer S.E. Ruckman contributed to this story.

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California Congresswoman In Oklahoma To Help Freedmen In Their Fight

KOTV - 8/20/2007 5:55 PM - Updated 8/20/2007 8:20 PM

A group of Cherokee Indians now consider themselves freedom fighters, as they try to get back into the tribe that voted them out. They've won the backing of a member of Congress, who wants to cut off the tribes federal funding, unless they restore the rights of the Cherokee Freedmen. The News On 6's Emory Bryan reports, at stake for the tribe is the right to do what they want, but by excluding the Freedmen they've brought congress into what was a fight in the courts.

On Monday a mixed race, but single minded audience came to hear and ask questions about the idea to financially strangle the Cherokee Nation unless it restores the Cherokee Freedmen to the tribe. Vicki Baker is one of the 2,800 Freedmen who the other Cherokees voted out of the tribe.

"It's important to me about my heritage and for my children to know about their heritage," said Cherokee Freedman Vicki Barker.

U.S. Representative Diane Watson wants the Cherokees to reverse the decision limiting membership to people with a documented Cherokee ancestor. The Freedmen in question were made part of the tribe by treaty.

"The treaty between the United States and the Cherokee Nation says that all of the Freedmen will be taken in and part of the nation with full benefits and services," said California Representative Diane Watson. "Once you take a vote to deny them that you have broken the terms of the treaty."

Dozens of speakers supported Watson's effort, though several complained it didn't go far enough. Some brought documents showing their ancestors were once Cherokees, but didn't make it on the official rolls. Some wanted Congress to force the hand of all tribes with Freedmen. The most heated words came from people who wanted a fuller examination of Indian treaties.

The Cherokee Chief, Chad Smith, says the political talk is about race, while the actual issue is tribal sovereignty and the right to decide who is and is not a Cherokee.

"The way to resolve this is through the courts, and let's see what the courts decide about the 1866 treaty," said Cherokee Nation Chief Chad Smith.

Representative Watson and Chief Smith have not met face to face to talk over the issue.

The meeting Monday afternoon, and another Monday evening in Muskogee, are not official congressional hearings, and the full congress may not even consider the threat to cut off funding to the Cherokees. But Watson says she'll introduce the legislation sometime next month.

How the Cherokee Nation case may affect civil rights

TULSA — The controversial status of freedmen in the Cherokee Nation of Oklahoma was characterized as the "most significant civil rights movement of this century" at a town hall meeting headed by a member of the California congressional delegation.

Rep. Diane Watson, D-Calif., introduced a bill that would cut off federal funding — about \$300 million a year — to the Cherokee Nation unless it restores citizenship to freedmen.

In a March 3 special election, 77 percent of about 8,000 Cherokees who voted decided to strip the freedmen of citizenship.

About 150 people attended the meeting in the Rudisill Regional Library, most to support the bill introduced by Watson.

The Watson entourage included, by her request, at least three members of the U.S. Capitol police force, a congressional agency.

Two uniformed Tulsa police officers also were at the meeting.

Treaty violation?
Watson said actions resulting from the March election were in violation

of an 1866 treaty and for that reason, the United States should not be providing funds to the Cherokee Nation.

"The law says we can't use U.S. dollars to violate the law," Watson said. American money can't be used to "discriminate."

The California representative told the group the only way to resolve this issue is to "return to full status" the freedmen.

In response Chad Smith, principal chief of the Cherokee Nation, said later in a telephone interview that the proper place to settle the issue is in the courts, where there are three lawsuits pending in federal courts and one in a Cherokee tribal court.

Until those lawsuits are settled, the freedmen retain previous rights and benefits in the Cherokee Nation. Smith said if the lawsuits support the election, the Cherokee Nation will help the freedmen transfer to other health care providers and ongoing treatment will "absolutely" continue.

Passage of the bill would eliminate 6,500 jobs at Cherokee casinos and other businesses with a payroll of more than \$184 million.

Federal funds are used for health, housing and education, Smith said.

Income from tribal businesses is divided, with 70 percent going into re-investment and 30 percent to augment social programs and also to fund community projects such as roads and water systems.

Verdie Triplett of the Choctaw-Chickasaw freedmen association, said historically, the black congressional caucus has always supported tribes in getting federal money.

"Congress is the only locomotive monster they respect," Triplett said. It is not a freedman issue "but an American issue because all Americans pay taxes," he said.

David Cornsilk said the March vote was illegal and "should have never happened."

Watson was scheduled to hold a similar forum Monday night in Muskogee.

By Larry Levy
State Correspondent

The Daily Oklahoman -
NewsOK.com

Check out back issues of the Cherokee Observer goto www.cherokeeobserver.org and click on the back issue link.