

Gaming Dividends Increase For Tribal Jobs, Not Services

By Ed Crittenden

Tahlequah - After over two months of heated battle by Council member Linda O’Leary, Delaware District, fighting to increase gaming dividends paid to the tribe by almost \$11 million from the current \$18 million, the administration asked Meredith Swimmer Frailey, Mayes District, to sponsor a similar bill which would only increase dividends by \$3.8.

In her presentation of the Bill to Council Frailey said, “This is significant legislation. It provides a total approach of economic development and transfers it into a holding company wholly owned by the Cherokee Nation. I believe this will stimulate corporate and the small business environment within the tribe.”

Councilwoman Cara Cowan, Will Rogers District, added, “Councilwoman Frailey is saying that we cannot increase our dividends haphazardly, using it only to fulfill immediate needs. This puts together the why and how and gives an intention for what we’re doing instead of just pork-barreling the dividends. This creates long-term growth,” said Cowan.

O’Leary stated, “Pork barrel is exactly what was created by the Frailey/Cowen Bill. The kicker to the Chief’s concept of an increasing in dividends to the tribe is that at the same time the Act increased dividends, a new entity was created that would totally and immediately consume all of those extra dollars by just creating more top heavy bureaucracy within the tribe instead of allowing the funds to flow into actual services to help the Cherokee people.”

“It was just another administrative illusion that something was done for us the people when the fact is, it was really done to usthem,” said O’Leary. “His The Chief’s slate, meaning Chief Chad Smith, with their majority of votes, has done a lot to the Cherokee peopleof that this term,” she added.

During her quest for the increase, O’Leary contended that CNE should at least contribute “a penny for the people from each dollar taken in gaming revenue to go toward specific tribal services for the people like healthcare, education, elder care and housing.” O’Leary is the Chair of Executive and Finance Committee and Co Chairman of the Health Committee.

The past fiscal year Cherokee Nation Enterprises, (CNE), brought in \$270 million after all winners’ payouts. CNE financials show that \$200 million was expended in salaries and overhead to net \$70 million in actual profit.

Dave Stewart Chief Executive Officer, (CEO), of CNE was asked to attend Executive and Finance meetings during the dividend increase debates over dividend increases to answer any questions from of Council.

Councilors supporting the O’Leary increase, questioned

CEO Dave Stewart why expenses are three fourths of total revenue when all facilities are owned free and clear. Little explanation was offered by Stewart. Stewart did claimed 1000 new jobs that because of anhave increased overheard in gaming enterprise.

Questions were also posed to Stewart about rumors that the operation had quickly become a top heavy bureaucracy of high paid upper level non-tribal employees.

O’Leary stated, “I have been told that you have basically hired Cherokee people for the lower paid jobs and non tribal members in the upper level positions where big bonuses are paid.”

Steward denied that the operation was top heavy and that an unbalanced number of non-tribal members exist in upper level positions. Stewart claimed there is at least 50% tribal employment throughout gaming operation.

O’Leary asked, “Why there is not closer to 100% Cherokee employment when there are more than 100,000 Cherokee tribal members living within driving distance of Cherokee casinos?” Stewart had little explanation except to sayd that “CNE hires the best trained persons we they can find.”

After the November Council meeting, a Cherokee Observer correspondent spoke with tribal members attending the council meeting about the dividend increase. One citizen said statedabout the dividend increase, “It’s just another example of a Chief who would rather use tribal money to buy his votes by creating meaningless jobs instead of earning ththeir voteem by serving the people.”

Another member added, “Anyone can see that all the service money is being funneled into creating jobs specifically for people willing to vote for this Chief in the next election. But tThat is did not increasing any actual services for the Cherokee people.” She said, “Creating a top heavy bureaucracy of jobs does not mean anything to cancer patients who are standing in line needing help or to the people waiting in line needing emergency housing or dialysis only to find there is no money for services. It’s just mcolorful ore smoke and mirrors of waste and corruption.”

During the investigative research of employment facts for this story the Observer also found there to be possible ongoing violations in Cherokee Nation nepotism laws within upper level officials. An inside source wishing to remain anonymous told the Observer correspondents that David Stewart’s son is currently a black jack dealer within the Catoosa Casino and that Stewart’s daughter is employed within upper level management just under Stewart himself. Allegedly Deputy Chief Joe Grayson and Councilman Buel

Three Cherokee Councilors File Suit Alleging Interference By Chief

By Ed Crittenden

Cherokee Nation – Judicial Appeals Tribunal – Three Cherokee Council members filed a Petition for Declaratory Relief stating that Chief Chad Smith has violated both the Cherokee Statute and the Constitution and has interfered with the Election Commission a crime that could have him removed from office. Two weeks after Smith approved and signed a Council Resolution where Dr. Charles D. Hathaway was unanimously approved, 14-0, Smith sent a memo to the Election Commission stating he would not affirm the nomination. Smith, on September 15th, filed suit in the Judicial Appeals Tribunal, (JAT), disputing that Hathaway is a seated Commissioner.

On November 14th Council members Johnny Keener, from the Mayes District, Linda O’Leary and Melvina Shotpouch, both from the Delaware District, filed a declaratory judgment asking the Cherokee highest court to rule that Dr. Charles D. Hathaway be found duly seated as the fifth Commissioner on the Cherokee Election Commission after Smith filed his suit against Hathaway.

Cherokee law establishes the Election Commission and appointments stating that two Commissioners shall be appointed by the Council, two appointed by the Principal Chief and one selected by those four appointees, and confirmed by the Principal Chief and Council. On May 19th the Commission met and selected

Anglen, from the Tulsa and Washington County Oologah District, both have relatives employed within Cherokee Nation operations possibly in violation of the restrictions set forth in the relationship guidelines for nepotism.

Title 19 Chapter 1 of the Cherokee Nation Code Annotated states; No person shall be employed in any capacity by the Cherokee Nation who is related to a member of the Council by affinity or consanguinity within the first degree. Relation by first degree includes parent, child, spouse, parent of spouse and child of spouse. All other relatives are not included within the first degree.

However under Chapter 16 Nepotism Section 481 – 487 of the code says these boundaries apply to all officials and it restricts employment to be outside the third degree of consanguinity, (by blood). In that section of law also states that the penalty of any executive, legislative, ministerial or judicial officer, who shall violate any provision of this article, shall be deemed guilty of a crime involving official misconduct and may be removed from office according to the mode of trial and removal prescribed in the Constitution and laws of this nation.

Councilman Bill John Baker, Cherokee District, made a motion that “Councilor Linda O’Leary’s name should be added as a sponsor because the increase would have never happened if it hadn’t been for her efforts.” The motion was approved by the councilors present.



Hathaway, a well respected Cherokee Chiropractor from Tahlequah practicing within the community for over 25.

June 20th Council unanimously approved Hathaway, 14-0, and on June 28th Smith both signed and returned Resolution 60-05 to Council within five days after receiving the document with a letter stating, “After careful consideration I am approving all but two enactments.” Neither of the two vetoed enactments were the Hathaway appointment.

Following Council approval, every enactment is required by the Cherokee Constitution to be passed to the Chief’s office for approval or veto and to be returned to Council within five days or the enactment automatically becomes approved by the Executive.

Smith contends that by signing the resolution he only meant to approve, Councils right to approve the nomination. However numerous exhibits within Smith verses Hathaway JAT Case 05-13 confirms that Smith has historically vetoed resolutions on which he has disagreed with Council’s resolve.

Two weeks after signing the Resolution and the selection process was completed according to Cherokee law, Smith sent a memo to the Election Commission stating he would not affirm the nomination. This action began a controversy that ultimately put the Election Commission into a tail spin that has distracted and prevented them from going forth with their rightful duties. Until the four Commissioners have selected a fifth and a full Commission has been seated no other business can be undertaken by the Commission.

In November of 2004 Cherokee citizens circulated four petitions garnering some 6000 signatures in support of the measures. Petitioners are still waiting for a Commission to receive the petitions and say they plan to ask for a Special Election. Proponents say the controversy began by Smith served to stall the petition process to kill time so there is less time for a Special Election before the next General Election. Proponents say killing precious time is creating an improbability that the people will be allowed to vote on issues that will likely affect the outcome in the next General Election and have also filed suit claiming interference by Smith in the election process.

Once Smith attempted to deny Hathaway after confirming him, both of Smith’s appointments attempted to thwart the Hathaway confirmation within Election Commission meetings. Just after their failure to do so both of Smith’s appointments, Judge Kyle Haskins, of Tulsa and Rita Bunch, Superintendent of Watts, OK Schools consecutively resigned their commissions leaving three Commissioners including Hathaway, which is a valid quorum.

Dwight Birdwell a respected former Chief Justice of the JAT serves as Attorney for the Councilors. Birdwell states in the suit that the Councilors believe the conduct of Smith refusing to recognize and honor the appointment of Hathaway as the fifth member of the Cherokee Nation Election Commission is a violation of 26 CNCA 11A, a statute that specifies the commission shall be independent in the performance of its statutory authority and in the performance of such authority shall not be subject to direction or supervision by the Executive Office or Cherokee Nation Council.

Birdwell states that Smith’s action is an impermissible attempt to exercise direction and supervision and in effect, gain control over the Election Commission and has interfered with the duties of a duly appointed Election Commissioner, as well as the Election Commission. Birdwell goes further to accuse Smith of also violating Article VI of Section 10 of the Cherokee Constitution, which requires any Chief to cause the laws of the Cherokee Nation to be faithfully executed.

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Council Approves Election Law Without Election Commission Input

prescribed by the Cherokee Constitution prefacing the June agenda items with a letter stating, “After careful consideration I have approved all but two enactments.” Neither included the Hathaway appointment.

Two weeks after signing the Resolution, Smith sent a memo to the Election Commission stating that he would not confirm the Hathaway nomination. Smith told a Muskogee reporter his reason was that he didn’t think Hathaway would have time for the position. Hathaway told the reporter that he is semi retired and was never even contacted by the Chief.

Shortly thereafter the Commission seemed to go into a tailsip where each of Smith’s two appointments, Judge Kyle Haskins and Rita Bunch both from the former controversial commission where the election ended in protest, consecutively resigned their commissions, which left three remaining Commissioners sufficient for a legal quorum.

Those Commissioners have been held at bay since September 15th when Smith filed a law suit asking the Judicial Appeals Tribunal, the Cherokee Nation’s highest court, to determine if by signing the Resolution, as prescribed by the constitution, did he actually approve the fifth commissioner? Smith contends that he only intended to approve Council’s right to confirm the Commission’s selection of the fifth member. Historically Smith has vetoed numerous Resolutions anytime he has not approved of Councils decisions, which immediately stopped those actions.

Almost three years ago Smith suggested that Council take the Election Law into the communities for citizens to have input. Over \$100,000 was spent on mail outs, community meetings and questionnaires to voters who many say was a waste of money and that their suggestions obviously fell on deaf ears. Inside sources told the Observer correspondent that the number one suggestion returned by citizens was to fix the absentee voting. That portion of the Election Law was not reformed by the Council although could have been within this Act. Many Cherokee citizens said they saw little reason to take questions about law out into the community to laymen when instead the same \$100,000 could have afforded a professional and autonomous institution like the Carter Commission to objectively perfect the Cherokee election process.

However elected officials chose to approve the new Cherokee election law with little objective input from the Election Commissioners. Only one sub committee meeting was held where Commissioners were invited and although a second

Councilors are asking the JAT to enter a judgment declaring that Hathaway is a validly appointed and confirmed member of the Cherokee Nation Election Commission not only obligated but also entitled to perform the duties of that office, as provided by the laws of the Cherokee Nation and that they be granted such other relief as may be just, proper and appropriate. One of the penalties for interference with the Election Commission by an elected official is removal from office restricting that person from holding office again.

Smith’s case filed against Hathaway is set to be heard by the JAT on the merits of the case in the Cherokee Nation Courthouse December 1, at 1:00. The entire Smith v. Hathaway

meeting was supposed to be scheduled, the sub committee didn’t notify Commissioners of another meeting before passing the laws to full Council in November.

Commissioner Jim Briggs told the Observer he had attempted to communicate with Rules Chairman Meredith Swimmer Frailey, who nominated him to the Council appointment, through several memos to determine the date of the second meeting so Commissioners could attend. Briggs said he received no reply to his requests. Commissioners said they had several additional suggestions and some items that needed to be changed. Commissioner Rick Doherty said there is a conflict within the new law in the date that absentee ballots are scheduled to be mailed out after the primary race. According to Doherty by the date prescribed to mail out absentee ballots for the run off one can still not tell who has won the primary.

Frailey presented the Act in the November meeting where she boasted of the accomplishment after six years of debate. However inside sources say that the current Council has only worked on the law sparingly over the past two years. Frailey stated, “The goal was to reform the election law to ensure that citizens of Cherokee Nation have an opportunity to participate in.”

A respected Cherokee Nation employee who asked to remain anonymous posed a serious question to the Observer, “What was the hurry after all of this time and then not to have the Election Commissioner’s objective input? Whenever election law is written predominantly by politicians... why would any Cherokee that has lived in the Cherokee Nation very long believe our elections will ever be honest to the people this government is supposed to be serving?”

Within the revision Council failed to change in the extreme burden of proof required within an election protest leaving it, *beyond a reasonable doubt*, the same as the burden used to incarcerate or execute criminals for murder. Legal experts told the Observer after the last election protest for the Cherokee people to ever have any assurance of fair elections the burden of proof should be set to a *preponderance of evidence*. Council also neglected to change the length of time allowed within the law to for a protest to allow for adequate discovery, which is absolutely critical for a fair trial. Current law requires an entire election protest trial to be concluded and ruled upon in too short a period of time to have any discovery of evidence to present a complete case. In the 2003 election protest witnesses were still coming into courtroom to testify after the JAT had ruled to dismiss the Chief protest on lack of evidence.

case can be found online at www.cherokeecourts.org, under JAT, Open Cases, Cases assigned to the Court, however at the time of publication the Council case JAT 05-16 was yet to be posted to the website. The entire petitioner’s suit against Smith can also be reviewed in the same place under JAT 04-14.