

Councilors respond in federal case

TAHLEQUAH — November 07, 2006

Cherokee Principal Chief Chad Smith recently filed a motion to dismiss a suit brought against him in U.S. District Court by seven tribal councilors, saying the councilors had no standing as representatives of the tribe in bringing the suit.

The suit is a result of a financial investigation into Cherokee Nation Industries' purchase of stock in Global Energy Group, a Plano, Texas-based company with no assets and considerable debt. Councilors allege Smith; Jim Majewski, then CEO of CNI; and Benny Dixon, former financial adviser for the tribe; committed fraud, corporate waste, mismanagement of funds and violated their fiduciary duties owed the councilors and tribe with regard to the purchase of the company.

Majewski was fired by the board of CNI last Monday following a lengthy internal investigation; Dixon resigned his post shortly after the investigation began. Tom Reynolds, former CFO of CNI, told councilors in June the tribe stood to lose approximately \$6.5 million due to the purchase of GEG. He resigned his post shortly thereafter, saying he had no desire to play k

Councilors bringing the suit on behalf of the tribe include Linda Hughes-O'Leary, Bill John Baker; S. Joe Crittenden, David Thornton Sr., Charles Hoskin, Melvina Shotpouch and John F. Keener. Smith alleges the councilors have no standing to bring the suit in light of the passage of the 1999 Constitution; and that the only person qualified to do so is the tribe's attorney general, Diane Hammons.

James Garland, attorney for the plaintiffs, believes the constitution invalid, as it has not received approval from the federal government. In addition, he asserts the plaintiff's standing is derived from their obligations as tribal councilors to protect the Cherokee Nation, their rights as individual tribal members and as citizens of the United States. a new constitution, gnty of the Cherokee

Tribal councilors responded to Chief Chad Smith's motion to dismiss a federal suit.

Nation exist so long as either the president of the United States or his appointee approves the constitution. Chief Smith continues to thumb his nose at the federal government, saying they do not need federal approval, but they do, as was stated by a representative of the Bureau of Indian Affairs in recent communications. If Smith continues in this fashion, there will be no tax-exempt status, no health care, no services and no sovereignty for the Cherokee people.

Garland also points out that, without BIA approval of the constitution, Hammons' position of attorney general does not exist.

The response states an office of attorney general even exists has been declared not effective by the BIA on Aug. 30, 2006 because the BIA has not approved what is known as the 1999 Constitution. The Cherokee Nation's valid constitution requires secretarial approval of amendments and neither the secretary nor any authorized representative of the secretary has approved the amendment. Article 8 of the prior constitution prohibited amendments to the Cherokee Constitution except when each amendment dealt with a single article. Further, Section 10 of the prior constitution provided that 'no amendment or new constitution shall become effective without the approval of the president of the United States or his authorized representative.' Under the prior Constitution now in effect, there is no office of attorney general.

Which leaves the responsibility of seeking justice to individuals charged with guarding the nation's assets as citizens.

ion for allegations of wrongdoing other than the citizens of the United States government, such as these seven councilors, t as to not ask for approval. The councilors have full authority to bring this suit through their own civil rights as American citizens.

Garland also pointed out no sovereign tribal nation can pass laws more restrictive than that of the federal government. those provided by the U.S. Constitution, d. freedoms, but they cannot restrict citizens.

Garland, in his response on behalf of the councilors, outlined their re-

sponsibilities as U.S. citizens.

tution as somehow a defacto instrument, that instrument is null and void to the extent that it purports to restrict the ability of an individual to sue derivatively to protect his property rights, indirect though they may be, under the laws provided by the United States of America to protect all of its citizens, d. ch a law. Its exclusive jurisdiction is vested in the Federal District Courts of the United States. The right to go to court and protect one's property rights, when the officers of the Nation are engaged in high-level corruption, and the Nation itself, through those same officers, refuse to take action is a denial of a fundamental right of every U.S. citizen. Any purported restriction on that right is a nullity.

Garland believes the administration ramrodded the passage of the tribal constitution to protect the chief from this investigation.

The 1999 constitution and the prohibition against others acting on behalf of the nation is designed only to protect high-level administrative officials who cannot or will not act to protect the assets of the nation, tes the response. onstitution is operative, all provisions of that Constitution denying U.S. citizens their right to go to court must be held unconstitutional and inoperative.

The response further states facts, accepted as true by the court, reveals a financial fraud perpetrated by certain insiders of the Cherokee Nation, to the detriment of tribal coffers. Plaintiffs are the best parties to prosecute an action such as this, given their fiduciary obligations under Cherokee law. Defendant's motion to dismiss should be denied.

Teddy Snell
Tahlequah Daily Press
106 W. Second Street; Tahlequah, OK 74464
(918) 456-8833



continued from page 1

Freedmen Prove Fraud on Black Friday

Earlier that same morning, Election Commission attorney James Cosby entered a motion that the petition should be declared invalid on its face because the Cherokee people have no legal or constitutional authority to demand a special election and asked that the case be dismissed. The Court chose to take the motion under advisement and withheld any ruling on Cosby's motion, which had been supported by a brief filed by Baker's advocate.

Once the court convened the first order of business was for Justice Matlock to announce that all subpoenas issued on behalf of Baker were declared invalid. He announced that the witnesses did not have to remain to testify. Three fourths of a packed courtroom rose and walked out, leaving only four witnesses, who later said they remained because it was the right thing to do.

Against great odds and with only a four witnesses remaining, Cornsilk, still presented abundant evidence that petition carriers committed fraud during the petition drive. Baker's written briefs laid out a series of improprieties and inconsistencies questioning hundreds of signatures that had been counted. Matlock went through the long list stating which questions would be taken into consideration and be a part of the ruling.

Cornsilk stated that he was pleased that most of the evidence presented within the written briefs would be included as evidence and that the court stated they would address each of a lengthy list of questions within their ruling.

Cornsilk, a Tulsa retail store manager, took vacation leave so he could attend trial on the busiest shopping day of the year. The litigant was required to present evidence which generally requires substantiation of the facts by witnesses, on a holiday when most people are on extended vacation with family or taking advantage of savings on Christmas sales. This was not the first such hearing on a holiday in this case, however. The first hearing was held on Veteran's Day.

Some in the audience wondered how the subpoenas for Garvin and Snell could be quashed when neither man showed up in court. One Cherokee citizen, who asked to remain anonymous, said, "Don Garvin [the Three Rivers District Councilor from Muskogee] obviously decided shopping was more important than attending court, as I saw him capitalizing on the sales at the Muskogee Staples store this morning." Garvin, who ran on Chief Chad Smith's political slate in the 2003 Election, was subpoenaed but failed to appear.

Matlock oddly scheduled the initial petition hearing on Veteran's Day, when the Cherokee government and courthouse is closed. Justices subpoenaed the two Election Commissioners who had received the petition and the two employees who performed the actual verification of voter signatures. However Cornsilk was not notified and unable to attend the hearing to represent Baker or cross examine any of those witnesses.

Baker a blonde hair blue eyed Freedmen said, "Cherokee Freedmen just like Cherokees by

blood can not be determined by the color of skin. Every Cherokee must be able to prove their lineage to an ancestor enrolled on the original Dawes Rolls. I am here to stand up for my precious and inalienable right of citizenship. Being Cherokee is my right according to the laws, treaties and constitution of the Cherokee Nation and no one has the right to take that away from me."

According to the Treaty of 1866 between Cherokee forefathers and the United States of America that declared the historic boundaries of the Cherokee Nation, the 1975 and the 1999 Cherokee Constitutions and most recently in a ruling by the Cherokee Nation's highest court, Freedmen are and have been Cherokee citizens for 140 years and are entitled to all privileges and rights including voting within Cherokee elections.

The Freedmen issue recently got national coverage in USA Today and is likely to end up in the spot light as the greatest civil rights controversy yet this century.

Jack Edward Crittenden a former Advisor to the Principle Chief of the Cherokee Nation said, "The BIA has allowed Freedmen membership to be placed on a ballot in other tribes but tribes have been required to follow very strict guidelines. Each tribe had been reorganized under the Oklahoma Indian Welfare Act of 1936, (OIWA), had to submit their election regulations and procedures to the BIA as per the Principal Chiefs Act of 1970 and a realistic number of Freedmen had to be able to vote within the election."

Crittenden said "The Cherokee Nation has never in the past 30 years submitted their election procedures and regulations according to the Principal Chief's Act of 1970 and has never reorganized under the OIWA. Since the ruling of the Supreme Court this year only a few Freedmen have had time to be registered to vote. After being disenfranchised for over twenty years, the BIA will likely require a realistic period to provide them adequate time to register before the Bureau would approve an election to remove them, even if the other two requirements were met. The Cherokee Nation is far outside of the standard the BIA has held all other tribes to in identical situations and I doubt they are going to approve any such election."

Crittenden circulated 4 petitions during the 2003 Cherokee National Holiday where carriers collected some 6,000 signatures. Once the Election Commission was duly seated he attempted to submit them. However Commissioners voted that a 90 day time limit had expired. Crittenden said that no Commissioners were seated when the petitions were due to be returned and Commissioners are the only legal entity to receive petitions. Crittenden filed suit but said he found no justice in the Cherokee courts.

Crittenden said, "Petition carriers have a serious responsibility not to commit fraud during a petition drive and to inform all potential signers of the law. They must present a warning page which is the first page of any legal petition. It tells voters that it is a crime to sign a petition more than once, or if you are not a registered voter, or to sign anyone's name but your own. If that page is removed or the packet is taken apart it is no longer a portion of a valid petition," Crittenden explained.

Phillip Carey another Cherokee citizen who attempted to exercise his constitutional rights this year circulated a referendum petition to block the expenditure of \$1.25 million on a TV media blitz by the administration. Although a sufficient number of signatures were collected, the court failed to order that question be placed on the ballot. Jim Wilcoxon served as attorney for CNE at the same time his brother was serving on the Election Commission who verified the signatures on Carey's petition.

Some allege a conflict of interest because Chief Smith cut the largest check in Cherokee history for \$750,000, naming CNE as the advertisement contractor. CNE is

a gaming operation owned by the tribe, not an advertising company. Jim Wilcoxon represented CNE as an attorney in that case and now sits on the Supreme Court which heard arguments on the Ketcher petition.

Smith filed notice with the court that he intended to go forward and spend the money and has since begun the advertising campaign. Carey's case is in District Court where Judge John Cripps recently ruled there is no provision for lay advocacy and Carey will have to hire legal council or drop the case. Cornsilk represented Carey as lay advocate until that ruling.

Carey said he was amazed at the inconsistencies and violations of law within the Ketcher petition drive. He said one of the glaring inconsistencies between the way the Commission had counted signatures on his petition and Ketcher's was that they cast out over 250 signatures on his petition because voters had not listed their tribal membership number. However not one signature was discounted on the Ketcher petition for lack of a number. Cornsilk listed hundreds that failed to list a number and asked the court to rule if the number was a requirement. Cornsilk asked the court to cast out every one because of the precedent set by the Commission in the Carey petition. That alone could cause the Ketcher petition to have an insufficient number of signatures.

Carey said "The manner in which Ketcher and his carriers presented their question to signers was far from honest. It seems that proponents presented tribal members with kind of a bait and switch type of question just to get them to sign," he said.

Carey said, "Witnesses he talked to said that Petition carriers asked them, Do you think that Cherokee voters should be able to determine in an election who can be a member of the Cherokee Nation? To that question most of us would agree that we should. Witnesses said that they were then told that the petition was to keep the blacks out of the tribe. Yet the blacks they were targeting had been Cherokee citizens for 140 years and had been granted citizenship by our ancestors who survived the trials and tribulations of those days together with Cherokee Freedmen.

I believe a more honest question would have been, 'Would you support banishing Cherokee citizens out of the tribe that traveled the Trail of Tears with our ancestors who afterward granted them citizenship, over 140 years ago?' Carey stated.

Witnesses called by Cornsilk testified that they had committed all of the crimes listed on the warning page. However each testified that they were never shown the warning page or told of the law that says they could not sign the names of others. Other evidence was presented that warning pages had been removed and packets taken apart during the drive. The signatures on those petitions were asked by Cornsilk to be cast out of the court.

Marilyn Vann, a petroleum engineer who is also President of the Decedents of Freedmen of the Five Civilized Tribes, testified that the Election Commission had, after numerous official requests and only two days before the trial, finally released the registered voter list and work product needed to compare names that had been counted within the verification process. Vann said she had only had time to research one volume of the six volumes, each about an inch thick, but had found 13 names, which had been counted by the Commission as registered voters but were not on the Election Commission registered voter list. Vann said by the time she finally attained the work product that she did not have adequate time to comb through the other five volumes to see if those also contained mistakes.

Rev. John Summerfield testified that he had signed the petition but the person circulating, Harley Buzzard was not the same who signed the affidavit on the back, Darren Buzzard, attesting he witnessed each of the people's signatures.

continued on page 3

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