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Editorial Opinion

Cherokee Council Revises Nepotism Laws - Did the Family Just Take Over CNO?

side of the boundaries where Cherokees gave a two to one vote of confidence for Smith's job growth philosophy as their leader. Only in two districts within the nation, Rogers County and the Tulsa /Washington area, far from the oppressed Cherokee back in the hills of the nation did Smith fare well. Voters within these Northwestern districts also elected Smith sponsored political slate members as their representatives including Cobb, who is one of the newly seated Councilors on Smith's "Team Cherokee."

Councilors opposing the measure expressed concern because of the lack of oversight Council has today to oversee the enormous job growth and unprecedented salaries within the CNO especially within the casino gaming operations.

**Linda O'Leary**, former Councilor for Delaware County and Chair of Executive and Finance stated, "With almost a billion dollars a year going through the operations of the CNO, this Council has less oversight than ever before. Nepotism laws have historically prevented anyone from legally appointing family members to key positions throughout the tribe and building a team of loyalist for anything other than what is best for the Cherokee people." she said.

"Furthermore, the voice of an entire district could be blanked out if a family member of anyone on this Councilor is an employee of a department or entity the question concerns. Anyone on this Council who is in that situation would not be able to cast a vote on such an issue. This legislation compromises the objectivity that elected officials must enjoy to adequately represent our constituents and perform the fiduciary duty with which we are entrusted." O'Leary stated.

"This government is in place to provide services the Cherokee people. We tell the federal government we can serve Cherokees more effectively and efficiently than either the state or federal systems can or will. If we are not making every good business decision possible to assure this, we are simply lying to get taxpayer money. This legislation creates enormous potential for corruption building a system that consumes the money in salaries to preferential family members rather than increasing actual services. It is counter productive to what the CNO and the Council is supposed to be doing for the Cherokee people," stated O'Leary.

Last year much debate was heard about Council's inability to determine how over two-thirds, \$200 million, of the \$300 million in Gross Profit was expended within the gaming operation. Additionally many Councilors were distressed with how the new structure created under the Smith administration usurped Council's constitutional responsibility of financial oversight to watch all revenue within the tribe.

Smith created a new corporation last term he named, Cherokee Nation Businesses, (CNB) to oversee all tribally owned business ventures. Smith initially appointed Callie Catcher, who also served as Treasurer of the CNO, as the CEO of CNB increasing her combined salary to approximately \$180,000 annually. Smith has since replaced Catcher with former Congressman Brad Carson who enjoys an even a larger salary yet Catcher received no decrease in pay. Allegedly Carson's wife was also initially hired as Carson's assistant for near \$60,000 per year.

Carson seemed to be lining Councilors out in a recent Regular Council meeting, that it is the CNB Board's responsibility to approve the budgets and expenditures of the Cherokee Nation owned corporations. However according to the Cherokee Constitution, the Council enjoys unbridled financial oversight authority within the government.

There has since been discussion that CNB may be a violation of the Council's constitutional authority over appropriation power and oversight responsibility of revenues within the tribe. Yet nothing has been filed to place the constitutional

question before the court.

Last month Council approved increasing the line of credit for CNB from \$40 million to \$125 million. However the Smith slate voted against including a 5% increase to the ceiling where Council could later increase the dividend from gaming. Carson told Councilors they needed to keep the dividend where it is to get the best deal from Bank of America on the line of credit. Council increased the amount CNB could draw out of the bank on top of all other tribal debt yet froze the ceiling on the casino dividend for services over the next six years. At last check Bank of America holds nearly \$100 million in CNO bank accounts. Any business negotiator worth their salt should have no problem getting the best deal possible with that kind of deposit power.

Over the past few years many of the top level employees from the government side of CNO have moved over to CNE employees where most enjoyed an increase in salary with an additional annual bonus, some as much as 100% of their annual salary.

Allegedly Mike Miller, spokesperson for the tribe, is an example of one who crossed over into the land of financial abundance. Although Miller is seen at every juncture speaking on behalf of the Chief on tribal affairs, rather than being paid from the Chief's tribal operations budget, Miller is paid from gaming money, his salary ultimately reducing Net Income and the dividend paid for services to the people.

With no Council oversight the casino operation can theoretically legitimize spending whatever amount the Board decides, thus lowering the remainder of the Net Profit. Only 30% of the Net Income is returned to the tribe as dividend.

In 2007, when Council reviewed the 2006 budget they found that nearly \$38 million, that was available or earmarked for services, had not been spent by the Administration. This amount equaled the total dividend from all gaming operations for 2005 and 2006 combined.

In 2006, employee bonuses on top of salaries within Cherokee Nation Enterprises, (CNE) the casino operation, totaled \$10 million. Many of the top level salaried employees receive 80-100% of their salary as an annual bonus. CEO of CNE, Dave Stewart is paid approximately \$150,000 annual salary plus 100% of that salary as an annual bonus. CNE Board members began voting themselves bonuses last term, which are now near \$50,000 a year. Prior to Smith, Board Members were given a reasonable stipend and the honor of being in such a position to help with business decisions for the Cherokee people.

Councilors opposing the Cobb legislation were concerned that the casino operation could easily become flooded with elected officials' family members enjoying high paid salaries and bonuses with little that could be done after the legislation was passed.

Because of Smith's newly created hierarchy with CNB positioned between the Council and the corporate moneys, Council can no longer determine much about the casino operation other than what they hear during brief monthly reports to the Council given by Stewart and Carson.

Although CNB was established to bring new business opportunities to the Cherokee Nation and promote job growth, to date the ventures CNB has overseen have ended in disastrous failures losing million of dollars while upper level positions within the ventures and CNB enjoyed enormous salaries and bonuses. Today CNB employees almost 50 people assessing new business opportunities for the Cherokee Nation.

In the last few years Councilors uncovered much that explains where much of the money is going. Throughout the corporate structure of CNO, unprecedented salaries are being paid many with additional bonuses each year, business ventures which reek of organized

crime, almost every new business venture going bust losing millions on each and with the Cobb legislation approved, the family can legally be placed throughout the operation without any control on salaries.

Last term, Cherokee Nation Industries, (CNI) invested approximately \$3 million from a BIA insured loan in a business named Global Energy Group, (GEG), a company who had a lease agreement on a patent for 20 year old technology in air conditioners that supposedly saved on utility bills. GEG financials reported only \$200,000 in intangible assets, the value they gave to the patent they did not own. In addition the financial structure of the company presented \$8 million in liabilities be paid to the primary stockholders of the company before any profits could be taken by CNI.

CNI purchased half interest in the company buying the stock from the primary stockholders personally rather than from the company where the capital went into those five peoples' pockets rather than into operating capital for the business. Further, CNI mysteriously failed to purchase approximately 5% of remaining outstanding stock, just enough to allow the tribe to lose controlling interest of the company. Last year a new investor bought the remaining stock. When this occurred CNI breeched the guaranteed loan agreement with the BIA, leaving the tribe totally exposed to the bank that held the note.

Several years ago Council approved acquiring the federally guaranteed loan, that was earmarked for the re-organization of CNI to protect the employees jobs after a significant bad inventory write off had put CNI in a state of insolvency. The federally insured money was never approved for venture capital, especially investments in high risk venture company stock. In 2007, CNI wrote off almost \$6 million in losses. CNI ended upside down financially insolvent, with GEG ending bankrupt.

Seven Councilors filed criminal suit in federal court last year attempting to recoup the Cherokee peoples' money. However the case was dismissed by the federal judge who said the Council had no standing to file the case. No evidence was ever examined by the court concerning the alleged crimes naming Smith, Jim Majewski, then CEO of CNI and Bennie Dixon, Business Director for CNO. The judge concluded that the only persons having standing to file such a case would be the stock holders of the tribe or the Board who approved purchasing the stock. The only stock holder within CNO corporations is the Chief and the CNI Board is appointed by the Chief. No further effort has been made to recoup any money although all evidence was turned over to the Board and the Attorney General, Diane Hammons, who also serves in conflict on the Chief's cabinet as General Council.

Subsequently Senator Tom Coburn was asked by Councilors to request the Securities Exchange Commission, (SEC) investigate the matter. The SEC has since ordered GEG to restate their financial statements disclosing improper stated assets in years past. GEG had misstated \$12 million of their net worth listing an exaggerated amount as good faith, creating an inflated value on the company's publicly traded stock. SEC investigations are kept private until concluded so no damage is done to a company if the investigation determines innocence. Thus the Smith campaign was able to keep the matter quite until after the 2007 election.

An examination of the communication between the SEC and GEG that the SEC also demanded to be made public discloses that much of the Councilors' suit hit the bull's eye. The SEC required this discourse be posted online for the benefit of the public, which can be reviewed at: <http://www.sec.gov/cgi-bin/browse-?company=global+energy+group&CIK=&filenum=&State=&SIC=&owner=include&action=getcompany>

Carson recently announced to Council that CNB made the decision to pay off all debts within CNI expending \$15 million from gaming revenues so that CNI could return to a financially stable condition once again. Council has a long history of bailing out CNI after mismanagement drives them into financial disaster. However this time CNB injected more gaming profits into the operation in one swipe than all of the historic bailouts combined.

Cherokee Idling Solutions, (CIS), a battery company for semi trucks, was another high risk business venture where CNI officials invested money from the BIA guaranteed loan.

After spending \$1 million Smith notified CNI that he did not want to pursue any further in that direction. However Majewski had other ideas and created his own Idling Solutions Company in Louisiana along with his son, which is still in operation. To date, no accounting books have been found by CNI disclosing how the million dollars was expended within the CIS venture.

Another business venture CNB brought to the CNO was named Cherokee Connex, a wireless internet service. In April 2007 the Council learned the tribe was set to lose \$3.6 million after only two years in that venture. The tribe loaned outside partners \$4 million but afterward found the market too sparse on customers.

The tribe's outside partners pledged personal guarantees of \$2 million to the Cherokees for their \$4 million loan, \$400,000 of which was paid in March of 2007, as agreed, Catcher, then still CEO of CNB, told Councilors. She said that another \$1.6 million was due in July but it is not clear if that money was received. The tribe has since backed out of the venture.

The Cherokees remained in the partnership until 2006, when the Cherokees "did a workout arrangement to get out of the business side of it," Catcher told councilors.

"Losses in Cherokee Connex were \$1 million the first year and \$900,000 the second year." Catcher said.

"We're out \$3.6 million if we never see any more," said O'Leary. "Also, we were told it (Cherokee Connex) would put a lot of Cherokee people to work. This has been a defunct thing from the get go."

Nepotism violations became blatantly obvious last term when O'Leary filed suit against Buel Anglen, Councilor for Tulsa Washington Counties, accusing him of nepotism violations. However the Cherokee Court has failed to date to rule in that case. O'Leary alleged that Anglen's two daughters were both employed by CNE one working in the money counting rooms inside the Catoosa casino. Robin Mayes, a Chief candidate in 2003, questioned Anglen's validity as a candidate by filing protest against him during the protest window of the 2007 election.

Mayes also presented the Commission undisputed proof that Anglen was not living within the district when he was selected by Council to fill a vacated seat. Mayes presented an affidavit to HUD from the Law and Justice Department of the CNO who deposed Anglen. Richard Osburn assistant prosecutor for the tribe stated emphatically that Anglen had lied to the previous Election Commission and Council about his residency.

The Election Commission ruled that nepotism would only become a problem if Anglen was re-elected. The Commission stated the law was clear that if he was reelected either Anglen or his family members would be required to resign. Although there was little doubt from the evidence that Anglen had served the entire four year term since 2003 in violation of nepotism laws, the Commission ruled that it was necessary for a Court to have found him guilty of the crime of nepotism

prior to the 2007 election for the Commission to rule him ineligible to run. The decision was split in a (3-2) vote with Drew Wilcoxon, Patsy Morton and Rick Doherty supporting Anglen and Jim Briggs and Dr. Charles Hathaway opposing him as a valid candidate.

Anglen ran again on Smith's slate but in the 2007 election the slate coined themselves as "Team Cherokee" a slogan which CNE has spent millions in advertising dollars to promoting the casinos.

Another "Team Cherokee," candidate, Deputy Chief Joe Grayson's son was also allegedly employed by CNE.

Although Councilor for Mayes County Meredith Swimmer Frailley's, son attempted to attain employment within CNE last term, allegedly he could never pass the drug testing. Months afterward, he was sentenced to prison on burglary charges. Since being released from the penitentiary he was recently arrested again on burglary in Mayes County but for some reason then transported to the Cherokee County jail. When Frailley was arraigned before Associate District Judge Mark Dobbins, Cherokee Nation attorneys argued that the case should be remanded to Tribal Court. Judge Dobbins questioned that the matter was an after former conviction of a felony and that tribal courts only have punishments for misdemeanors. Mysteriously the case was handed to the Cherokee Courts yet the outcome is unknown.

Within this term, several of the newly elected Councilors had family members working for the Cherokee Nation prior to the election. According to law at the time of taking the oath of office in 2007, either those family members were required to resign their employment with CNO or the elected person had to resign from taking the oath.

Although the Cherokee Court previously ruled that the Housing Authority of the Cherokee Nation, (HACN) is a State Agency and that employees are not CNO employees, Rex Jordan, who was working for the HACN, was the only elected official's family member who made an honest attempt to honor the law by resigning his employment. Rex is the husband of Tina Glory Jordan, a newly elected Councilor for Cherokee County.

The following Councilors who ran on Smith's "Team Cherokee" may have been in violation of the law upon taking the oath of office, before the nepotism law was amended.

Harley Buzzard, of Delaware County, allegedly had family members including his son, working for CNO at the time of taking the oath yet they still remain employed.

Charlie Soap continues employment with CNO, although his son Chris Soap is now a seated Councilor for Mayes County. However Soap did vote against the Cobb legislation.

Curt Snell, Councilor for Delaware County, allegedly transferred ownership of his construction company to his son. Snell is allegedly contracting work on health clinics for the tribe and was one of the contractors on the Sequoyah Gymnasium.

Cara Cowan Watts, from Rogers County, husband allegedly has begun bidding on construction projects solicited by the CNO.

Julia Foster Coats was a CNO employee prior to the election organizing Cherokee history classes throughout the USA. Allegedly her position was converted to a contracted position with CNO where she continued to work through the election and may still be enjoying that financial gain.

O'Leary stated, "Supporting this legislation is a direct violation of the trust that Cherokee people grant to elected officials. Before anyone enters public service they need to decide if they honestly want to serve

their people or if they would rather profit by doing business with their government. But no person can serve two masters.

She said, "Several of Smith's slate, during the last term, were in violation of Nepotism laws yet the court or Attorney General would do nothing. This term they have become even more unconscionable to abolish laws that for decades have defined the crime of nepotism as being so serious as to warrant removal from public office." she said.

"From the corruption Councilors discovered last term throughout the corporate structure and the way the Administration has built layers of hierarchy blocking Council from oversight of the finances, this legislation just opened the door for corruption throughout the employment base. It is a bad indication of what's ahead. This legislation just handed over our nation to "The Family." O'Leary concluded.

Any Councilor who was in a violation of the Nepotism laws in place prior to this revision, because a family member was at that time employed within CNO or who was benefiting from a contract with CNO at the time of taking their oath of office could be found to have been improperly seated and if they were still in violation at the time of this measure being voted on, would have been conflicted to participate in the vote on this question. However as you can see by the following tally, all who were alleged to be conflicted above, chose to participate and most voted to approve the legislation to legalize any current violation of the law.

Legal argument could possibly be made that this legislation was never legally approved because possibly conflicted Councilors participated in a vote that would abolish their conflict yet no conflict was disclosed and their vote significantly affected the approval of the measure.

The new Nepotism Law Section 5 (20) (A) states: If an elected official has an immediate family member employed by the Cherokee Nation or a Cherokee Nation instrumentality, the employment of whom is not otherwise prohibited by this Act, such official shall disclose that relationship prior to any vote or action involving the department or instrumentality in which the relative is employed, except for votes taken in the annual budgeting process, in open session, but excluding the budget modifications. The Council shall require, by a majority vote, the disclosing Council member to recuse himself/herself should the Council determine a conflict of interest exists. Failure to disclose such relationship prior to action or vote involving the department or instrumentality may constitute willful neglect of duty and may result in removal of the Council member pursuant to the laws and Constitution of the Cherokee Nation.

An abstention is typically cast if a person feels they may be conflicted to participate in the vote or they might abstain if they feel the measure is illegal or unconstitutional. An abstention actually counts as a No Vote if a measure is not passed by at least a majority of the members in attendance, as it is not a vote to approve the measure.

The vote to approve the legislation as recorded:

Harley Buzzard	Yes
Curtis Snell	Yes
Cara Cowan Watts	Yes
Buel Anglen	Yes
Julia Coates	Yes
Meredith Swimmer Frailley	Yes
Jack Baker	Yes
Bradley Cobb	Yes
Janell Lattimore Fullbright	Yes
Don Garvin	Yes

Joe Crittenden	No
Charles Hoskin, Jr	No
David Thornton, Sr.	No
Chris Soap	No
Bill John Baker	Abstain
Tina Glory Jordan	Abstain
Jodie Fishinhawk	Abstain
- Disclosing that she had family involved.	
<b>The YES votes are from TEAM CHEROKEE.</b>	