

# A Leader special report Hoskin, Cherokee chief trade claims of 'illegal' acts House 6 hopeful won't give up tribal seat if elected

By JOHN M. WYLIE II, Editor - Copyright 2006, Oologah Lake Leader LLC

Chuck Hoskin has built his House District 6 campaign around his career as a successful Cherokee lawmaker. Now Cherokee Chief Chad Smith and other tribal leaders say he has become a petty, ineffective lawbreaker. Those accusations were made a few days after Hoskin joined in a lawsuit which makes similar charges against Chief Smith.

Hoskin said Tuesday that he joined the lawsuit without regard to the potential impact on his current political campaign, adding that he hopes "my viability as a candidate...will remain intact."

"As an elected leader of that tribe I am responsible for making sure that the Cherokee people's money is spent wisely," he said. "Whether I am running for a state elective office or not, those things still have to take priority."

"The only people I considered at that time were the Cherokee people," he continued. "I don't know how this is going to impact my ability to campaign and to serve the people of District 6."

Hoskin said he did not consult any Democratic Party leaders or campaign supporters before the lawsuit was filed. That includes former Democratic Congressman Brad Carson of Claremore, who is a Cherokee and a high-ranking employee of the Cherokee Nation.

Carson wrote a fund-raising letter on Hoskin's behalf seeking \$5,000 per family from his past Congressional campaign supporters. Carson could not be reached for comment.

Hoskin also said Tuesday that if elected to the Oklahoma House, he plans to retain his Cherokee legislative seat through June after taking the oath for his state office in November. He said he would abstain from any votes which might create a conflict.

The dual jobs would give him an annual pay rate of almost \$80,000 plus a per diem of over \$100 for the legislative job and travel expenses for the Cherokee post. He said he would not seek reelection to the Cherokee seat in the June tribal elections.

The current controversy Hoskin and six other Cherokee Council members launched a federal lawsuit June 23 against Chief Smith and Cherokee Nation Industries executives Benjamin Dixon and James

Majewski. The plaintiffs claim they are acting on behalf of the Cherokee Nation in the \$5 million suit which filed June 23 in the U.S. District Court in Muskogee.

It alleges fraud and breach of fiduciary duty as well as mismanagement and waste of tribal assets.

Hoskin and the other councilors claim that Smith, Dixon and Majewski duped honest tribal leaders and lured the nation into a disastrous economic development deal to acquire the controlling interest in a company called Global Energy Group.

Chief Smith notes that only a minority of "dissident" members of the 15-member council are participating in the lawsuit. Council Speaker Meredith Frailey calls the court action unconstitutional.

Smith, Frailey and others point out that it is illegal for individual councilors to take action on behalf of the Nation. It also is illegal to hold a council meeting without an advance agenda, a quorum, and a recorded vote.

Hoskin said his attorney has told him not to discuss why he felt the lawsuit was needed, how the decision to file it was made, or any other details of the court action.

He said he would discuss the case further with his attorney today (Thursday) and might have additional comment after the meeting.

Smith said the "dissident" councilors have voted to reappoint the Cherokee Nation Industries board members after they evaluated Global and gave final approval to the acquisition last summer.

Chief Smith said the "illegal" acts by Hoskin and the other councilors are part of a political vendetta that will backfire and "blacken the reputation of all tribes."

That claim is ironic since Hoskin has been endorsed by Indn's List. The Tulsa-based group, headed by well-known Democratic political leader Kalyn Free, is the first national organization to specifically recruit and fund Indian candidates for state and national elective office.

Hoskin, one of the first two candidates endorsed, was among those speaking at a major fundraiser held at the home of longtime Democratic leaders Jim and Sally Frasier in Tulsa. But Smith says Hoskin's actions actually help the "many anti-tribal

forces operating in Oklahoma as well as nationally."

Smith says the Council's attorney "refused to file the suit on behalf of the dissident council members" after determining that they lacked authority to file anything on behalf of the Council or the Nation.

The councilors then retained James Clinton Garland, James Clinton Garland III, and William Joseph Garland to file the lawsuit. All are part of the Commercial Litigation Group in Tulsa.

Mike D. Miller, Cherokee Nation communications officer, said the council members signed a contract with the attorneys "but no checks have been requested or cut."

It is unclear what will happen if the councilors present a bill to the Nation for payment, officials say.

Besides Hoskin, councilors joining the suit are Linda Hughes-O'Leary of Jay, S. Joe Crittenden of Stillwell, Bill John Baker of Tahlequah, Melvina Shotpouch of Jay, John F. Keener of Salina and David Thornton, Sr. of Vian.

### What is Global?

Global is a small, publicly traded company which manufactures patented, highly efficient heating and cooling equipment. It has gone through a number of financial and ownership changes, of which the Cherokee acquisition is the most recent.

Global's Chief Financial Officer, John Bailey, says the councilors and their lawsuit may have actually cost the tribe \$5.5 million in lost stock market profits, based on a drop in stock prices since the councilor's claims began to circulate. There is no way to directly link those events, he added.

However, he said the nation has made a \$4 million profit on the \$2.5 million investment it made last August, based on Monday's stock price.

"I believe a \$4 million gain would be considered excellent by anyone in the financial community," Bailey said.

Both sides agree that the Nation, through a complex deal involving affiliates and subsidiaries, acquired a controlling interest last year in Global Energy Group for \$2.5 million.

The company says its equipment can save customers enormous amounts of money on its energy bills, making them extremely valuable during a time of high electricity and gas prices.

The deal also includes a contract for Cherokee Nation Industries (CNI) to manufacture the equipment, providing new jobs in Oklahoma.

However, Global has never posted a profit, before or after the Cherokee acquisition.

CNI acquired a 52% stake in Global by making a down payment of \$500,000 on May 20, 2005 and, after additional research and negotiations, an additional \$2 million payment at closing.

A key allegation in the lawsuit is that Global added a \$15.595 million intangible asset labeled goodwill to its balance sheet at a crucial point in the acquisition process.

The suit says the figure is "fictitious" and alleges that Smith, Majewski and Dixon hid information that would have allowed CNI directors and tribal counselors to determine Global's questionable "ability to operate as a going concern."

However, three consecutive Global annual reports to the Securities and Exchange Commission included repeated warnings in that there is "sub-

stantial doubt about the company's ability to continue as a going concern."

Two of the reports were issued before the goodwill asset was added and the third came afterwards. That means neither management nor Global's independent accountants changed their overall representation to the public about how much risk was involved when buying Global stock.

All of this information was available for free and as soon as it was filed with the SEC on the company website, www.gegsolutions.com. In addition, all councilors were invited to a meeting in January with the Cherokee nation's subsidiary board and top Global officials to discuss any issues about the company they wished.

Bailey, the Global CFO and chief spokesman, said a variety of marketing, product and financial questions were raised during the meeting and that all were answered.

He also said none of the councilors have been rebuffed in getting information. Neither he nor Hoskin could remember if Hoskin attended, but each confirmed never having a one-on-one conversation with the other. The suit claims that the company rebuffed councilors' questions.

### Cherokee, OK politics collide

The controversy is often described as the latest chapter in a long-running "blood war" between two Cherokee political factions.

It also creates a huge political dilemma for District 6 voters.

While it will take years to separate the saints from the sinners in the internal Cherokee dispute, the three-way Democratic primary is July 25, just 19 days away.

Most House District 6 residents (see map) have no stake in internal Cherokee politics, and many who do are represented by Rogers County Tribal Councilor Cara Cowan-Watts. She says she is staying neutral until all facts are in.

But Smith heads an independent government with an enormous economic impact in Rogers County including: Grants to area government and public service programs.

Cherokee Nation marshals who are cross-deputized with the Rogers County Sheriff's Office.

Ownership of Will Rogers Downs Racino and the Cherokee Casino and Resort near Catoosa.

Coupled with the Will Rogers Birthplace — located in District 6 — and the Will Rogers Memorial, the Cherokee race track, casino and golf course complexes are turning Rogers County into a multi-day tourist destination.

But there have been growing problems getting Oklahoma lawmakers to properly fund the Memorial and Birthplace.

That situation could worsen if the area has a House member who goes into office at war with the sitting Cherokee administration.

Hoskin faces Chelsea Mayor Kenny Weast and Welch resident Henry Flanders in the Democratic primary. The winner will square off against the survivor of the GOP primary between Wayland Smalley of Chelsea and Pat Lair of Vinita.

Hoskin said that he now recognizes that the lawsuit raises serious political issues, but added that he is not considering withdrawing from the race.

# Cherokees: Chief Disagrees: BIA asserts stance on constitution

By S.E. RUCKMAN World Staff Writer S.E. Ruckman 581-8462 se.ruckman@tulsaworld.Com



Chad Smith

The Cherokee Nation principal chief maintains that the BIA official's letter was a request and not a demand. 9/9/2006

Bureau of Indian Affairs officials said their letter specifying the need for federal approval of the Cherokee Nation's constitution was not a request, not a demand, but "a statement of fact, determined within the parameters of our processes," a spokeswoman said Thursday.

Nedra Darling of the BIA offices in Washington, D.C., said an Aug. 30 letter from Jim Cason, associate deputy secretary of the Department of the Interior, to Cherokee Nation Principal Chief Chad Smith fell within the agency's legal authority to request that the Cherokees seek federal approval of their constitution.

Smith maintains that Cason's letter was a request and not a demand, according to an e-mail he sent to Cherokee Nation employees on Thursday.

"Nowhere in his letter does Associate Deputy Assistant Secretary James Cason cite any federal authority for the BIA to approve the Constitution," Smith said in the e-mail, sent to more than 1,000 tribal employees. "I can assure you that we will continue to carry out the mission of the Cherokee Nation to work together to support our Cherokee citizens, our sovereignty in full force and effect, regardless of the speculation of a few news articles."

Darling said the federal agency was willing to base its assertion that the

tribe required federal approval for its present governing document on the Principal Chiefs Act of 1970 and the Cherokee constitution.

Bureau representatives specifically pointed to Section 1 of Public Law 91-495, which authorizes each of the Five Civilized Tribes of Oklahoma to select their principal officer by tribal popular vote. The act also reads, "Such established procedures shall be subject to approval by the Secretary of the Interior."

Smith said the 1975 federal Self Determination Act ended what he called "bureaucratic imperialism." That statute allowed Indian tribes to govern as independent governments.

"With regard to Cason's letter, and the BIA's quote per the Tulsa World, we regard the letter as an official courtesy without any authority over our constitution," Smith said.

Cherokee voters chose a 1999 amended version of their constitution in a 2003 election. The tribe submitted the document to the bureau for approval but never received that approval.

The tribe's high court issued a decision in June that certified the constitutional approval by the Cherokee people, although it lacked a federal OK. Tribal justices asserted in the decision that federal approval was a self-imposed guideline and removed by voters in 2003.

Darling said the federal agency deals with tribal constitutional questions at the rate of up to 10 a year, for both big and small tribes. The Cherokee question involves issues that the agency has experience with, she said.

"The same standards that apply to the Cherokees apply across the board to other tribes," she said.

The tribe's 1999 implemented version of a constitution allows for term limits, new judges and cabinet seats within the chief's administration. Smith is in the third year of his second four-year term.

## BIA Approval doesn't matter

David Cornsilk

While this contrived controversy continues to boil, the will of Congress remains an unanswered questions.

Should the BIA choose to approve the amendment removing federal oversight from the 1975 Constitution, that will not change the stated will of Congress.

The 1970 Principal Chiefs Act delegates to the President or his designee (Sec. of Interior), the power and authority to approve or disapprove any changes to Cherokee law. We already know that the CNO constitutions, both 75 and 99, are nothing more than gloried election rules (Ragsdale letter). We also know that the Cherokee Nation was frozen in time in accordance with the "full force and effect in accordance with law" provision of the 1906 Five Civilized Tribes Act.

The BIA, if it approves the amendment, will only be approving a self-imposed requirement on the Cherokee people to seek approval from the President. Neither the

Cherokee people's vote, nor the proposed action by the BIA to approve removal of that requirement from the CNO constitutions, can change the will of Congress.

In other words, the BIA's approval of the amendment will only remove the self-imposed requirement that we ask for approval. What it does not and cannot do is remove the congressionally mandated requirement that the President of the United States, or his designee (Sec. of Interior), give his approval.

So long as the actions of the CNO leadership and the Principal Chief remain internal to the tribe, we could be operating under an outdated version of Readers Digest. But when there is interface between the United States and the CNO, which requires some form of official recognition of the 1999 Constitution, the will and intent of Congress as stated in the 1970 PC Act must be taken into consideration.

Change of Address form with fields for NAME, New ADDRESS, CITY, STATE, ZIP, Phone #, Email, Old ADDRESS, CITY, STATE, ZIP, Phone #, Email, and email or snail mail.

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