



CHEROKEE NATION ELECTION COMMISSION

Ph: 918-458-5899 | TF: 800.353.2895 | F: 918.458.6101

AGENDA SPECIAL MEETING

March 25th, 2021

4:45 P.M.

- I. Call to order
- II. Roll call
- III. Approval of Minutes from the March 9th Regular Meeting
- IV. Approval of Minutes from the March 9th Special Meeting
- V. Old Business-None
- VI. Current Items
 - a. Consideration and possible action on drawing for Candidate order on the ballots for the 2021 General Election
 - b. Consideration and possible action on drawing for Watchers for the 2021 General Election
 - c. Consideration and possible action on approving ballot styles for the 2021 General Election
 - d. Consideration and possible action on Absentee Affidavit and Instructions
 - e. Consideration and possible action on Candidate financial reports
- VII. Executive Session
 - a. Confidential discussion with attorney on pending litigation, claims, investigations or protests
 - b. Personnel
 - c. Exit Executive Session
- VIII. Action from Executive Session
- IX. Announcements
- X. Adjourn

POSTED
3-24-21 4:45 PM

March 24, 2021 by 4:45 PM
Cherokee Nation Election Office
17763 S. Muskogee Ave
Tahlequah, OK 74464

Chairperson: Shawna Calico

Posted by: _____



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CHEROKEE NATION ELECTION COMMISSION

Special Meeting Minutes

March 25th, 2021

I. Call to order

- The Special Meeting of the Cherokee Nation Election Commission for March 25th, 2021 was called to order by Chairperson Shawna Calico at 4:46pm.

II. Roll call

- Election Commission Secretary Rick Doherty called roll and a quorum was established with the following Commissioners present:

Shawna Calico – Chairperson
Pamela Sellers – Vice Chairperson
Rick Doherty – Secretary/Treasurer
Randy Campbell – Commissioner
Elizabeth Ballew – Commissioner

- Office staff present were: Connie Parnell & Marcus Fears
- Election Commission Attorney Harvey Chaffin was present

III. Approval of Minutes

- Chairperson Shawna Calico asked for approval and/or discussion regarding the minutes of the March 9th Regular Meeting. Pam Sellers made a motion seconded by Randy Campbell to approve the March 9th Regular Meeting minutes. The motion was approved by all Commissioners.
- Chairperson Shawna Calico asked for approval and/or discussion regarding the minutes of the March 9th Special Meeting. Pam Sellers made a motion seconded by Randy Campbell to approve the March 9th Special Meeting minutes. The motion was approved by all Commissioners.

IV. Old Business

- None

V. Current Items

- Consideration and possible action on drawing for Candidate order on the ballots for the 2021 General Election.
 - i. The drawing was done one district at a time. No drawing for District 11 was done due to the Commission still awaiting an official ruling from the



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Cherokee Nation Supreme Court. The Administrator, Marcus Fears, would read each Candidate name from a paper list, show everyone all of the names, cut and fold each name and place them into a basket. Names of Candidates were drawn one at a time representing the Candidate order on the ballots. Pam Sellers made a motion seconded by Elizabeth Ballew to accept the Candidate order as drawn, except for District 11 to be drawn after the Supreme Court Ruling. The motion was approved by all Commissioners. **(Attachment # 1)**

- Consideration and possible action on drawing for Watchers for the 2021 General Election.
 - i. Drawings for Precinct Watchers was not necessary. The Commission allows for 2 Watchers per precinct and not enough watchers were submitted to require a drawing. Each Candidate that submitted precinct watchers, received their watchers. In a similar way the Candidate drawing was done, Mr. Fears read each Candidate and the Watcher name from a paper list for each day of In-Person Absentee Watching, they were cut, folded and then one name per day of In-Person Absentee Watching was drawn. Mr. Fears then read each Candidate and the Watcher name from a paper list for each day of Absentee Verification Watching, they were cut, folded and then 6 names for Absentee Verification Watching were drawn as well as 2 alternates pursuant to Section 53C of the Election Law. Randy Campbell made a motion seconded by Rick Doherty to approve the Watchers for the 2021 General Election as drawn. The motion was approved by all Commissioners.
- Consideration and possible action on approving ballot styles for the 2021 General Election.
 - i. Connie Parnell presented each ballot style. Each ballot is specific to the District and Precinct of the Voter. Pam Sellers made a motion seconded by Elizabeth Ballew to accept the ballot styles for the 2021 General Election. The motion was approved by all Commissioners.
- Consideration and possible action on Absentee Affidavit & Instructions.
 - i. Considering an official opinion from the Cherokee Nation Attorney General, the specific wording in the amendment to the Election Law LA 24-20, Section 78, and the Commission's statutory responsibility to determine if the witness is 'of legal age,' **(Attachment #2)** the Commission



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updated their Absentee Affidavit & Instructions to require a Government issued photo ID from both the Voter and the Witness for the 2021 General Election. Randy Campbell made a motion seconded by Elizabeth Ballew to approve the Absentee Ballot & Instructions with the noted changes. The motion was approved by all Commissioners.

- Consideration and possible action on Candidate financial reports.
 - i. Discussion was held on options for posting Candidate Financials to the EC website or a CN file sharing site for those requesting to view Candidate Financials. Rick Doherty made a motion seconded by Randy Campbell to not post any financials and to continue the method of email, printing or viewing in person. The motion was approved by all Commissioners.

VI. Executive Session

- None

VII. Action from Executive Session

VIII. Announcements

IX. Adjourn

- Rick Doherty made a motion to adjourn at 6:48pm. The meeting was adjourned.

Minutes submitted by Rick Doherty, Secretary/Treasurer

2021 General Election Candidates

District 2

- Candessa Tehee
- Dusty Fore
- Vicki Creel
- Claude Stover
- Bobby Slover
- Tonya Teaney
- Jami Murphy

District 4

- Sarah Cowett
- Mike Dobbins

District 5

- E.O. Smith
- Richard W. Tyler
- RL Bell

District 7

- Gena Kirk
- David Comingdeer
- Joshua Sam

District 9

- Mike Shambaugh
- Lawrence Panther
- Joyce Nix McCarter

District 10

- Melvina Shotpouch
- Darrel Hicks
- Shaunda Handle-Davis
- Cody Williams
- Dennis Ackley
- John Ann Masters Thompson

District 11*

- Mason Hudson
- Mike Purcell
- Victoria M. Vazquez
- Randy Junior White

District 15

- Danny Callison
- Meredith Frailey

At-Large

- Wallace Ryan Craig
- Marilyn Vann
- Mary-Charlotte Grayson
- Shawna Johnson
- Matthew Benjamin Scraper
- Robin Mayes
- Kyle Haskins
- Johnny Jack Kidwell

*To be drawn after Supreme Court
Ruling



CHEROKEE NATION
OFFICE OF THE ATTORNEY GENERAL

P.O. Box 948
Tahlequah, OK 74465-9904
918-453-5000

Sara Hill
Attorney General

OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Shawna Calico, Chairperson of the Cherokee Nation Election Commission

Opinion Number: 2021-CNAG-01

Date Issued: March 24, 2021

You have asked for an opinion answering the following questions:

- I. Under LA 24-20, what is the legal age required of a witness?
- II. Under LA 24-20, does the witness have to include a government issued photo ID; or, does only the voter have to include a government issued photo ID to comply with Section 78 of the Election Code?
- III. If a witness does not provide an ID, how does the Commission determine whether the witness is of legal age; or, is it necessary that the Commission determine if the Witness is of legal age?
- IV. Does an affidavit envelope signed by two witnesses meet the requirements of Section 78?

ANSWER AND ANALYSIS

Short Answers:

- I. The legal age required to be a witness under LA-24-20 is eighteen (18) years of age.
- II. The statute is ambiguous as to whether the witness must include a copy of a government issued photo ID, however in expanding absentee voting verification options, the Council placed an additional statutory responsibility upon the Election

Commission to ensure that the witness verifying such ballot is of legal age. The voter is required to include a copy of their government issued photo ID.

- III. Because the statute is silent as to how the Commission should determine a witness's legal age, the Election Commission must determine how it will satisfy this statutory responsibility.
- IV. No, an affidavit envelope signed by two witnesses does not meet the requirements of 26 CNCA § 78.

Background:

Legislative Act 24-20 ("Act"), passed by the Tribal Council and signed into law by the Principal Chief, amended Title 26, Section 78 of the Cherokee Nation Code Annotated to "enhance and expand the verification of identification of Cherokee citizens voting through absentee ballots." LA-24-20.¹ The initial amendment contained in LA 24-20 was introduced as follows:

§ 78. Return of absentee ballots

A. A voter shall mark his ballot in permanent black or blue ball point ink; seal the ballot in the secrecy envelope; fill out completely and sign the affidavit on the front of the affidavit envelope ~~in the presence of a notary public; the affidavit envelope must be notarized and the notary seal affixed for the ballot~~ : (i) in the presence of a notary public; (ii) in the presence of two (2) witnesses; or (iii) in the presence of one (1) witness and enclose a copy of a government issued photo identification or their Cherokee Nation issued voter identification card. The affidavit envelope must be: (a) notarized and the notary seal affixed to the affidavit; (b) signed by the two (2) witnesses; or (c) signed by the one (1) witness and included an enclosed copy of a government issued photo identification or their Cherokee Nation issued voter identification card to be counted; and return the documents inside the postage paid return envelope via the United States mail to the Election Commission. Only those absentee ballots which are mailed to the Election Commission and which reach the Election Commission post office box in Tahlequah, Oklahoma, no later than 7:00 p.m. on Election Day shall be counted; provided that personal delivery of an absentee ballot shall be accepted during in person absentee voting as provided in 26 CNCA § 62(D) and on Friday the day before election and election day from 7:00 a.m. to 7:00 p.m., only if the voter or person designated by the voter delivers the ballot to the Election Commission Office. Voting in person at a precinct by a voter who has requested an absentee ballot shall be permitted, however, that voter must cast a challenged ballot to allow the Commission to determine whether an absentee ballot was cast. In the event that a valid absentee ballot was returned by the voter, the challenged ballot will not be

¹ The archived video footage of the Rules Committee meeting during which the Act was considered is available at: https://www.youtube.com/watch?v=RHGw3Pgrlzk&list=PLZEkBhbUA_CUw_E6bhmKcVwG23jA54mJD&index=8

counted. In the event that a valid absentee ballot was not returned by a voter, the challenged ballot will be counted.

In accordance with the appropriate procedure, the Speaker entertained discussion of the Act during which various Tribal Councilors voiced their thoughts. The debate included, among other things, the potential burden of the notarization requirement, election security, ballot integrity, and potential criminal authority over non-Indians. Councilor Janees Taylor offered a “friendly amendment” to strike section (ii) and all references to “of their Cherokee Nation issued voter identification card” contained in the original version of the Act. As the debate continued, several Councilors and the Council’s attorney clarified the impact of the “friendly amendment.” The Act’s sponsors ultimately accepted the “friendly amendment.” A roll call vote was conducted and the final version of the amendment—reflecting Councilor Taylor’s “friendly amendment”—was passed 12-5.

At no point during the discussion reflected in the archived meeting footage was the term “legal age” discussed. At some point—though it is unclear when—the phrase “legal age” was included into the final version of the Act that was ultimately passed by the Tribal Council and signed into law by the Principal Chief. The final version transmitted to and signed by the Chief reads as follows:

§ 78. Return of absentee ballots

A. A voter shall mark his ballot in permanent black or blue ball point ink; seal the ballot in the secrecy envelope; fill out completely and sign the affidavit on the front of the affidavit envelope ~~in the presence of a notary public; the affidavit envelope must be notarized and the notary seal affixed for the ballot~~ : (i) in the presence of a notary public; or (ii) in the presence of one (1) witness of legal age and enclose a copy of a government issued photo identification. The affidavit envelope must be: (a) notarized and the notary seal affixed to the affidavit; or (b) signed by the one (1) witness of legal age and included an enclosed copy of a government issued photo identification to be counted; and return the documents inside the postage paid return envelope via the United States mail to the Election Commission. Only those absentee ballots which are mailed to the Election Commission and which reach the Election Commission post office box in Tahlequah, Oklahoma, no later than 7:00 p.m. on Election Day shall be counted; provided that personal delivery of an absentee ballot shall be accepted during in person absentee voting as provided in 26 CNCA § 62(D) and on Friday the day before election and election day from 7:00 a.m. to 7:00 p.m., only if the voter or person designated by the voter delivers the ballot to the Election Commission Office. Voting in person at a precinct by a voter who has requested an absentee ballot shall be permitted, however, that voter must cast a challenged ballot to allow the Commission to determine whether an absentee ballot was cast. In the event that a valid absentee ballot was returned by the voter, the challenged ballot will not be counted. In the event that a valid absentee ballot was not returned by a voter, the challenged ballot will be counted.

Analysis:

The Act's language is ambiguous and includes undefined terms. The general starting point in statutory interpretation is the ordinary meaning of the statutory text. Under the "ordinary meaning" canon of statutory construction, "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin. v. United States*, 444 U.S. 37, 42 (1979). As an initial matter, it is unclear from the archived meeting video how or when the phrase "legal age" was included in the final amendment. The term was not contained in the original draft and it was not considered as a floor amendment. It also was not included in the amended draft the Tribal Council's Legislative Aide read back to the body in preparation for the final vote. Nevertheless, such phrase was incorporated and ultimately included in the final version of the Act transmitted to and signed by the Chief. Such acts make it the law of the Cherokee Nation.

In any event, the term "legal age" was not expressly defined by the Tribal Council. "Legal age" has many meanings depending on the context surrounding its usage. Reading this Act *in pari materia* with the remaining provisions of Title 26 however, it is apparent that the Tribal Council has only granted rights under the election laws of the Cherokee Nation to persons who are at least eighteen (18) years of age. For example, the age of eligibility to cast a vote or to aide another in casting a vote is eighteen (18) years of age. *See* 26 CNCA § 3(1); 26 CNCA § 21(A). Candidates running for elective office must be at least 25 years old to run for Tribal Council or 30 years old to run for Principal or Deputy Chief. *See* 26 CNCA §§ 32; 33. Minors are expressly prohibited from making campaign contributions. *See* 26 CNCA § 43(C). In sum, no person under the age of eighteen (18) may exercise any right granted under Title 26.

Fundamentally, we are generally required to presume that legislative enactments intend to produce reasonable and logical results. If possible, such presumption should lie against futility. *See United States v. O'Driscoll*, 761 F.2d 589, 597 (10th Cir. 1985). Because other provisions contemplating age within Title 26 require an individual to reach at least eighteen (18) years of age before exercising the rights granted therein and another provision expressly prohibits participation *via* campaign contributions from "minors"; the term "legal age" in this instance should be read to logically align with the rest of the title. Therefore, the term "legal age" as used in 26 CNCA § 78 means eighteen (18) years of age.

With regard to the Act's remaining ambiguity—who is required to provide proof of photo identification upon verifying an absentee ballot—we begin with the legislative history. The stated purpose of the Act was to "expand the verification of voter identification of Cherokee citizens voting through absentee ballots." LA 24-20. Upon a plain reading, the Act appears to attempt to establish two ways through which a voter casting an absentee ballot may be verified to be counted. During discussion of the Act, Councilor Patzkowski sought clarification of the friendly amendment's affect and specifically asked whether the witness and the voter must submit a copy of their government issued photo ID. It appears that a few Councilors, though it is unclear who exactly, indicated that the voter must submit such proof of identification. Thus, it is clear to this Office that the intent was to, at least, require the voter to submit proof of identification. Therefore, the Election Commission should require a copy of the voter's proof of identification under 26 CNCA § 78.

Moreover, though the final version of the Act does not expressly reflect this direction and in expanding absentee voting verification options, the Council placed an additional statutory responsibility on the Election Commission: to ensure that the witness verifying an absentee voter's identity is of "legal age." Because we must again presume that the Council did not intend for a futile result and absent express direction from the legislature in the statutory text, this ambiguity must be read to permit the Election Commission to determine the process that will enable them to carry out their statutory duty.

Accordingly, to ensure compliance under Section 78, the Commission must either require a witness to also enclose a copy of their government issued photo ID or include printed language on the affidavit envelope through which a witness can affirm their age under penalty of perjury. The Act's ambiguity cannot be read so that the Election Commission is compromised in carrying out their statutory duties. Further, under the plain language of the Act, an affidavit envelope signed by two witnesses does not fulfill the verification requirements established under 26 CNCA § 78.

IT IS THEREFORE, THE OFFICIAL OPINION OF THE ATTORNEY GENERAL THAT:

- 1) The term "legal age" as used in 26 CNCA § 78 means eighteen (18) years of age.
- 2) The statute is ambiguous as to whether a witness must include a copy of their government issued photo ID, however the voter is required to include a copy of their government issued photo ID.
- 3) The Council placed an additional statutory responsibility upon the Election Commission to ensure that the witness verifying an absentee ballot is of "legal age," but provided no process through which the Election Commission must fulfill such responsibility. Because the statute is silent as to how the Commission should determine a witness's legal age, the Election Commission must determine how it will satisfy this statutory responsibility.
- 4) An affidavit envelope signed by two witnesses does not meet the requirements of 26 CNCA § 78.



Sara E. Hill
Attorney General
Cherokee Nation

CHEROKEE NATION ELECTION COMMISSION

 REGULAR MEETING

 SPECIAL MEETING

COMMISSION PRESIDED BY: Shawna Calico

MEETING DATE: 3-25 at 4 AM/PM at the CNEC Office

Commission Member: Present/Absent

Shawna Calico

Present/Absent

Pamela Sellers

Present/Absent

Randy Campbell

Present/Absent

Rick Doherty

Present/Absent

Elizabeth Ballew

Present/Absent

Quorum Established:

YES / NO

CNEC Attorney: Harvey Chaffin ☐

Staff Present: ☒ Marcus Fears ☒ Connie Parnell ☒ Kendal Bishop ☒ Charlene Keys

Visitors:

Bobby Slou

Paiten Qualls

Ched Hunter

Thursday, March 25, 2021 4:45PM

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