

Tribal Operations

JUL 11 2003

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465

Dear Chief Smith:

This letter is regarding matters related to the Cherokee Nation Election of May 24, 2003. The Eastern Oklahoma Regional Office (EORO) is in receipt of a June 23, 2003 letter from the Cherokee Nation Election Commission certifying the results of the election for the offices of Principal Chief and certain Council representatives, certifying the results of the Referendum on Constitutional Amendments, and requesting a written response of approval or disapproval of this certification of results within thirty (30) days. The Region is aware of no requirement that the Department of the Interior certify the election as to Council representatives.

While the Region is aware of no requirement that the Department certify the Election for the office of Principal Chief, the Nation has been advised on two occasions regarding the requirements of the Principal Chiefs Act of October 22, 1970, 84 Stat. 1091. The Act provides that the procedures for the election of the Principal Chiefs of the Five Civilized Tribes must be approved by the Secretary. As you know, the United States District Court for the District of Columbia held that the Act remains in full force and effect. Seminole Nation of Oklahoma v. Norton, Case No. 00-CV-02384 (CKK) (Memorandum Opinion of September 27, 2001). In the referenced correspondence, the Nation was asked to submit its current election laws and procedures for approval.

On May 31, 2003, the Executive Director, Cherokee Nation Government Resources Division, responded to the Region's request by referring the Department to the Cherokee Nation Constitution and Title 26 of the Cherokee Nation Code and advised that the code is available for public review and may be copied from the Cherokee Nation's internet web site. Please advise whether the referral was intended to constitute the extent of the Cherokee Nation's correspondence regarding this issue. It does appear that such review and approval is necessary before the Department can recognize the results of the May 24, 2003, election as it pertains to the office of the Principal Chief.

Further, it is presumed that the request to certify the election as it pertains to the Referendum on the Constitutional Amendment is a request for approval of the Amendment itself pursuant to Article XV, Section 10, of the Cherokee Nation Constitution.

Prior to his retirement, Assistant Secretary - Indian Affairs Neal McCaleb indicated a willingness to approve the amendment as it had been presented to him in draft form if proper procedures were followed by the Nation. In order to expedite the review of the Referendum on the Constitutional Amendment, please provide this office with evidence necessary to establish the Nation's compliance with the substantive and procedural election requirements set forth in the Cherokee Nation Constitution and the Cherokee Nation Code.

With the Amendment in mind, this office understands that a new constitution has been proposed and is slated to be presented to the Cherokee Nation voters during the run-off election scheduled for July 26, 2003. It should be noted that the Amendment, which would remove the requirement of Federal approval of constitutional amendments to the Cherokee Nation Constitution or a new constitution, has not been approved at this time. Accordingly, if the Cherokee Nation's presentation to the Cherokee voters of a new constitution is in some way premised upon the Amendment that the voters adopted on May 24, 2003, it is premature at this time.

Finally, the Acting Assistant Secretary - Indian Affairs has received the enclosed correspondence from an attorney who represents several Cherokee Freedmen. As part of the review of the Amendment, the Region would like to consider the Cherokee Nation's position regarding the issues raised in that correspondence. Please convey a position, if any, to the Region as soon as possible so that deliberations on this matter may proceed as expeditiously as possible.

Thank you for your continued cooperation regarding this matter. If you have any questions, please do not hesitate to contact this office.

Respectfully,

(Sgd) Jeanette Hanna

Regional Director

Enclosures

cc: Acting Assistant Secretary - Indian Affairs
Office of the Tulsa Field Solicitor
Attn: Charles R. Babst, Jr.