



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Eastern Oklahoma Regional Office
Post Office Box 8002
Muskogee, Oklahoma 74401

Office of the Regional Director

July 25, 2003

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465-0948

Re: Election of Officers and Constitutional Amendment

Dear Chief Smith:

This is in reply to your letter of July 14, 2003, which responded to the Region's letter of July 11, 2003. Following the July 17, 2003 teleconference, this office discussed these issues with the Acting Assistant Secretary - Indian Affairs and the Solicitor's Office, and is now providing the Cherokee Nation with additional information and clarification regarding the Department's position on the May 24, 2003 election.

As indicated in the July 11 correspondence, there is no express requirement in Federal law that the Department of the Interior certify the results of a Tribal election for Tribal officials, including the election of Principal Chief. The Act of October 22, 1970 (84 Stat. 1091) (commonly referred to as the "Principal Chiefs Act"), provides, however, that the procedures for selecting the Principal Chief of the Cherokee Nation are subject to approval by the Secretary of the Interior. We are aware of no evidence that the Secretary has approved the current procedures for the election of the Principal Chief.

The obligation to approve the procedures for selecting the Principal Chief is a different matter than certifying the actual selection of the Chief or any other officer. It is for the Tribe in the first instance to resolve internal disputes over election procedures and results. *See Wheeler v. Department of the Interior*, 811 F.2d 549 (10th Cir. 1987). There are only limited circumstances which would justify the Department's involvement in Tribal matters. *Id.* at 551-52. The Principal Chiefs Act establishes one such circumstance. Accordingly, in order to preserve the Government-to-Government relationship and avoid undue interference in Tribal matters, the Department will continue to recognize you as Principal Chief pending a fully informed agency decision regarding the Cherokee election laws and procedures pursuant to the Congressional mandate in the 1970 Act.

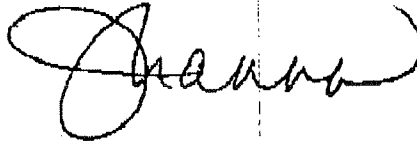
The July 11 letter also addressed the question of the referendum on the amendment to the Tribal constitution. Former Assistant Secretary McCaleb had stated his willingness to approve an amendment that would remove the requirement for Secretarial approval of future amendments, if the vote on that amendment was properly conducted. The proposed amendment that would remove the

requirement for Secretarial approval of future amendments or a new constitution has not been approved and is therefore not yet effective.

This situation appears identical to the one involving the Seminole Nation of Oklahoma in which the Federal District Courts upheld the Department's position that the requirement on the face of the Tribal Constitution that amendments be approved could not itself be removed without Secretarial approval. See *Seminole Nation of Oklahoma v. Norton*, 206 F.R.D. 1 (D.D.C. 2001) (GKK) ("*Seminole I*") and *Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122 (D.D.C. 2002) ("*Seminole II*"). It is understood that the Nation takes a different view of the Seminole cases and that the Nation's attorneys have corresponded with the Solicitor's Office directly on those issues. The attorneys representing the Cherokee Freedmen have also corresponded with the Solicitor's Office regarding those issues. A copy of that letter is attached. If the Cherokee Nation would like to respond to the letter from the Freedmen attorneys or would like to share with the Department any discussion regarding the possible effects of the *Seminole I & II* decisions on the May 24, 2003 election, please forward that information to the Solicitor's Office.

It is hoped that this has clarified the Department's positions with regard to the May 24 election. In the interim, this office will continue its review of the material provided by Mr. Pat Ragsdale on July 11, 2003. If there are any questions, please contact this office.

Respectfully,



Regional Director