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**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2021-01¹**

QUESTIONS SUBMITTED BY: The Honorable Geoffrey Standing Bear, Principal Chief of the Osage Nation.

The Office of the Attorney General received your request for an Official Opinion regarding the power, or absence thereof, of the Assistant Chief position when the Assistant Chief is acting as Principal Chief in the temporary absence of the Principal Chief.

I. QUESTION AND SHORT ANSWER

When a situation described in [Article VII] Section 6 occurs during the Assistant Chief's required service in [Article VII] Section 7 are any of the powers and duties assigned to the Assistant Principal Chief by the constitution negated?

No, the Constitution does not negate any powers or duties assigned to the Assistant Chief when serving as the Principal Chief pursuant to Article VII, Section 7.

II. DISCUSSION

This is a question of first impression and a matter of interpreting the meaning of constitutional provisions. As such, we must look to the Supreme Court for instruction on

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interpreting the Osage Nation Constitution. Overall, the Supreme Court opines, “we must evaluate constitutional provisions by reviewing the document as a whole, considering each provision as it relates to the others and giving each word its plain meaning when read in the context to avoid absurd or inconsistent results.” *Red Corn v. Red Eagle*, SPC-2013-01, p. 4.

Art. VII, § 6 enumerates the powers and duties of the Assistant Principal Chief (“APC”). Most notably for your question, section 6 says, “The Assistant Principal Chief, shall, by virtue of his office, be an ex officio member of the Osage Nation Congress and shall have a right, when in committee of the whole, to join in debate; and, whenever the legislature shall be equally divided, the Assistant Principal Chief shall cast the deciding vote.” This constitutional provision noticeably and repeatedly uses the word “shall”. Shall is mandatory and confers a power and duty on the APC that is a command and not merely discretionary,² as the use of “may break a tie” would be. Based on a plain reading, the provision places a legal duty and requirement on the APC to break a legislative tie by casting the deciding vote.

The Constitution also provides “[t]he Assistant Principal Chief shall serve in the temporary absence of the Principal Chief and when serving will have all the privileges, duties and powers of that office.” Osage Const. Art. VII, § 7. Again, the use of the word “shall” as mandatory and not the use of “may serve” as acting Principal Chief. The provision confers a legal duty and requirement on the APC to serve as acting Principal Chief in the Principal Chief’s temporary absence.

The Supreme Court teaches us, “Every member of each branch of government must carry out his or her duties in accordance with the plain meaning of Constitution. Anything less is a disservice to the People.” *Standing Bear v. Pratt*, SCO-2016-01 at 35. The Constitution places a

² The Osage Nation Supreme Court determined the word “shall” to be “compulsory”. See *Red Corn v. Red Eagle*, SPC-2013-01 at 10-11 (interpreting the Ethics Law).

duty on the APC to break and legislative tie and to service as Principal Chief in his absence. There is no limitation on this duty in either section 6 or 7. The Osage citizens could have included said limitations in the constitution, but chose not to. Therefore, the constitution does not expressly limit or negate APC's powers when acting as Principal Chief.

A constitutional interpretation that negates the power of the APC while acting as Principal Chief is against the government's primary function, which is to serve the Osage People according to their Constitution. *Pratt* at 21. "Even taken as a whole the Constitution is designed precisely to promote government efficiency and prohibits gridlock and inaction." *Id.* If the Congress is equally divided and the APC cannot cast the deciding vote, then the legislature would be gridlocked. Additionally, not allowing the APC to join in debate and state the Executive Branch position on a bill, only to have the APC wait and veto the bill as acting Principal Chief, is utterly inefficient and renders an absurd result to the constitutional meaning of sections 6 and 7.

Alternatively, allowing the APC to cast the deciding vote but not sign the legislation would naturally prevent the government from enacting legislation until, or if, the Principal Chief resumes the powers and duties of the position. If a Principal Chief is absent but does not resign from office, the Constitution does not deem the position of Principal Chief vacant until the Principal Chief has been absent in excess of six months. Art. VII, § 8. This could mean if the Principal Chief is unavailable and the APC casts a deciding vote, that legislation could sit unsigned for several months or longer. This could equally result in the APC casting a decisive vote and then signing the legislation as PC if the PC resigns or is stripped of office due to excessive absence or unavailability. However, this is still an action wholly empowered in the Executive Branch by the constitution. "While we agree that interaction and cooperation between branches is imperative to the function of any government, we are mindful of the historical prelude to our present Osage

constitutional government. Osage governance prior to adoption of the Constitution was often characterized by gridlock and inaction occasioned by power struggles between the executive and legislative branches.” *Standing Bear v. Whitehorn*, SCO-2015-01 at 18. While the possibility that an extraordinary circumstance could arise should not alone control interpretation of Constitutional provisions, if one interpretation eliminates the possibility of the extraordinary circumstance while another would only exacerbate it, that should be given due consideration.

This position is supported when interpreted in conjunction with the separation of powers affirmative mandate in Art. V., § 2. This section dictates unequivocally that the three branches of government “shall be separate and distinct” and no person charged with duties under one of the branches “shall exercise any power properly vested in any of the other except as expressly provided in the Osage Nation Constitution.” Art. VII, § 6 empowers the APC, as a person in the Executive Branch, to be an ex-officio member of Congress and to cast the deciding vote when the Congress is equally divided. Negating this power while the APC is acting Principal Chief removes constitutionally vested checks and balances that the separation of powers affirmative mandate is designed to protect. “[I]n crafting their Constitution, the people intended that there be clear lines of authority between the branches.” *Pratt* at 20. Section 7 does not limit the power given to the office of the APC, instead it gives the APC “all the privileges, duties and powers” of the office of Principal Chief. With no express provision limiting the power of APC while acting as Principal Chief, the power is still vested in the APC as an Executive Branch member and cannot be read to be removed or negated by exercising the duties assigned under section 7 of the constitution.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General:

Nothing in Constitution negates the powers and duties of the Assistant Principal Chief given in Art. VII, § 6 while acting as Principal Chief in accordance with Art. VII, § 7, including the vested power to be an ex-officio member of Congress and to cast the deciding vote in the event of a legislative tie.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clint Patterson", written over a horizontal line.

Clint Patterson, Attorney General