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**OFFICIAL OPINION
ONAG-2022-02¹**

QUESTIONS SUBMITTED BY: The Honorable Angela Pratt, Speaker of the Osage Nation Congress.

This Office has received your request for an Official Attorney General Opinion regarding Congress and the Principal Chief's ability to view expenses of Osage Casinos and the Nation's wholly-owned limited liability companies. To wit, you ask:

I. QUESTION and SHORT ANSWER

Are the Principal Chief and the Osage Nation Congress, as the representatives of the Owner, the Osage Nation, entitled to see the expenses of the Osage Casinos and the wholly-owned limited liability companies including the credit card statements and expense reports of Executive-level [sic] employees?

Yes. So long as the requests to review are done according to protocol set forth in the Osage Gaming Law and the Osage Nation Limited Liabilities Company Act, respectively, the Principal Chief and the Osage Nation Congress are entitled to review the expenses of Osage Casinos and wholly-owned limited liability companies.

II. DISCUSSION

For the purposes of discussion, we will bifurcate the question into two parts. In the first part, we will examine the Principal Chief and Congress' authority to review expenditures of the Osage Casinos ("Casinos"). Secondly, we will look to the same authority to review the

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expenditures of the Nation's wholly-owned limited liability companies ("LLCs"). The authority of the Osage Nation Congress and Principal Chief will be discussed separately within each section.

1. Expenses of the Osage Casino

Gaming revenue is a vital part of funding for Osage Nation programs, government operations, and economic development. Since 2002, the Osage Nation conducted gaming operations in some form. However, on December 16, 2004, the Osage Tribe entered into a Tribal-State Gaming Compact with the State of Oklahoma to conduct Class III gaming and opened new opportunities for Osage Casinos. The Deputy Assistant Secretary of the Department of the Interior approved the Compact on February 9, 2005, and thus began the era of Class III gaming on Osage lands.

Approval of gaming operations begat the need for regulation. On March 18, 2005, the 31st Osage Tribal Council passed Resolution No. 31-1125, enacting the Revised Gaming Ordinance of the Osage Nation (then the "Osage Tribe of Oklahoma") to regulate all forms of gaming on Osage lands. The Chairman of the National Indian Gaming Commission approved the gaming ordinance under the Indian Gaming Regulatory Act for gaming on Indian lands over which the, then, Osage Tribe has jurisdiction. With the adoption of the new Constitution, new name, and new form of government adopted on March 11, 2006, the Savings Clause, at Art. XXII, Sec. 1, preserved Resolution No. 31-1125 and the Revised Gaming Ordinance until the formally reestablished Osage Nation could create a law consistent with the powers and authorities established in the Constitution. Subsequently, on December 8, 2006, the Osage Nation Congress passed ONCA 07-09, now known as the "Osage Nation Gaming Law," codified at as Title 14 of the Osage Nation Code, replacing Resolution No. 31-1125 and governing all gaming on the Nation's lands.

The Osage Nation Gaming Law at 14 ONCA §§ 12-101 - 108. contains the "Osage Nation Gaming Reform Act of 2007." 14 ONCA § 12-102 (B). 14 ONCA § 12-102 (G) states:

The purpose of this law is to establish a structural and procedural framework that both fosters the Osage Nation Gaming Enterprise's accountability to the Nation and provides sufficient flexibility to enable the Enterprise to operate profitably as well as to reduce and limit the exposure to civil liability that may arise in the form of contracts, loans, expenditures, or obligations of the Osage Nation gaming and gaming-related operations.

The Gaming Reform Act of 2007 recognizes Osage Nation gaming operations as a business enterprise under the Executive Branch and addresses the need for the Principal Chief to appoint a Gaming Enterprise Board ("GEB"), with the advice and consent of Congress, to oversee Osage Nation gaming operations and gaming-related business. 14 ONCA § 12-104. Additionally, the Gaming Reform Act of 2007 establishes qualifications, sets the terms, and authorizes and limits the powers and duties of the GEB. *See generally* 14 ONCA § 12-105.

14 ONCA § 12-105 (C)(7) defines the GEB's duties "[i]n carrying out its responsibilities for the protection, maintenance and proper disposition of all funds, accounts and other property that come under its authority or control or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities." Of relevance to your question, 14 ONCA § 12-105(C)(7)(e) delineates the GEB's financial reporting responsibility to Congress. This section states the GEB shall:

Whenever requested in writing by the Speaker, appear before and answer to the Osage Nation Congress and/or any committee thereof so designated by the Speaker, in connection with any investigation into the use or disposition of funds, resources or property within the Board's control or any other action or inactions of the Board;

A plain reading of this section means Congress, through the request of the Speaker, is entitled to investigate, and therefore review, any expenses within the GEB's control, without limitation.

In addition to the Gaming Enterprise Board, the Nation adopted and established a Gaming Commission. *See* 14 ONCA §§ 2-101 -107. The Gaming Commission was established to "provide for the orderly development, administration, and regulation of gaming activities within the

jurisdiction of the Osage Nation.” 14 ONCA § 2-101. The Gaming Commission is tasked with “[r]eviewing all gaming operation contracts, records, documents, and anything else necessary and pertinent to the financial accountability of licensees or to the enforcement of any provision of this statute or Osage Nation Gaming Commission regulations”. 14 ONCA § 2-105. To complete said review, the Gaming Commission has been delegated the power to “[d]emand access to and inspect, examine, copy and audit all papers, books and records concerning activities and revenues of any gaming activity conducted on Osage trust lands and any other matters necessary to carry out their duties under this statute”. 14 ONCA § 11-114 (F).

In addition, the Gaming Commission, “through its Chairman, shall provide to the Principal Chief, Assistant Principal Chief, and Osage Nation Congress, quarterly reports of the activities of the Commission. In addition, the Chairman shall provide *any other report requested by the Principal Chief, Assistant Principal Chief, and Osage Nation Congress*, or as requested by the National Indian Gaming Commission.” 14 ONCA § 2-107 (*emphasis added*). Although potentially onerous, the Principal Chief, Assistant Principal Chief, and Osage Nation Congress could request a complete report of the Casino’s expenses.

The Nation business boards are placed under the Executive Branch. Osage Const. Art. VII, § 14. The Principal Chief is vested with the authority and responsibility to “see that the laws [of the Osage Nation] are faithfully executed, administered and enforced.” Osage Const. Art. VII, § 1. Incumbent in the power and responsibility to execute, administer, and enforce laws is the power and authority to investigate compliance with the laws of the Osage Nation. See J. Goldstein & J. F. Manning, *The Protean Take Care Clause*, 164 U. Pa. L. Rev. (2016) at 1854 (*analyzing the Take Care Clause under the US Constitution as it applies to the President and providing “a well-known – and commonsensical – canon of textual interpretation instructs that the imposition of a duty necessarily implies the grant of powers sufficient to see the duty fulfilled”*). As such, since

the Osage Nation Constitution vests the supreme executive power in the Principal Chief, and imposed a duty upon the Chief to see that the laws of the Nation are faithfully executed, administered, and enforced; it would necessarily include the power to investigate all execution, administration, and enforcement of the laws of the Osage Nation. Thus, the Principal Chief, pursuant to the Constitution of the Osage Nation, may review the records of the Osage Nation, and its subdivisions, enterprises, and boards, to ensure the laws of the Nation are being complied with.²

2. Expenses of Wholly-Owned LLCs

You ask this question in general terms, encompassing all wholly owned LLCs. It is impossible to answer this question fully in a vacuum. The Articles of Organization and Articles of Operation of each wholly owned LLC would control the accessibility of records and rights of members. However, there are sections of the Osage Nation Limited Liability Companies Act (“LLC Act”) at 4 ONCA § 2-101-993 (2021) that speak directly to access to records by members. We will discuss those sections below.

The LLC Act at 4 ONCA § 2-911 (2021) states, “[t]here are hereby authorized to be created by duly adopted Joint Action Resolution of the Legislature, approved by the Principal Chief, limited liability companies wholly owned by the Nation, which shall be instrumentalities of the Osage Nation.” Wholly owned LLCs are “created for the purpose of carrying out authorities and responsibilities of the Osage Nation government for economic development of the Nation and the advancement of its members.” 4 ONCA § 2-913 (2021). A wholly owned LLC’s purpose shall relate “to the overall needs, priorities, goals, and objectives of the Nation and the Nation’s government” its purpose shall be to “contribute to Osage Nation[’s] economic policy and further the Nation’s goals of self-determination and economic self-sufficiency.” 4 ONCA § 2-916 (2021).

² This power is not without limitation. The Constitution clearly provides for Separation of Powers. Osage Const. Art. V, § 2. Thus, the records of other branches of the Osage Nation government may be beyond the Principal Chief’s immediate access. Additionally, some enterprise or board records may require a court subpoena (although that is beyond the scope of this Opinion).

A. Inspection

4 ONCA § 2-305 (B) provides “[u]pon reasonable request, a member may, at the member’s own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the articles of operation.” For wholly owned LLC’s, the Osage Nation, as the sole member, possess the right to inspect all LLC records. While the LLC does not clearly delineate which branch of government has the right to inspect LLC records, since the voting interest is reserved to Congress and the Principal Chief, the most logical reading of these provisions is that the inspection rights are also vested in the Congress and Principal Chief.

B. Audit

To ensure a wholly owned LLC is meeting its economic purpose and goals, the LLC Act reserves certain audit powers to the Nation. 4 ONCA § 2-961 (2021) states:

The Nation may at any time, by process *in the manner provided in Section 2-941* of this Title, require that any LLC wholly owned by the Nation or an LLC in which the Nation owns the majority interest be audited by an independent auditor hired by the Nation *who shall have the absolute right to require access to all of the LLC’s records and documents necessary for such an audit.*” (*emphasis added.*)

Section 2-941 of the LLC Act mandates a three-step process on how the Nation votes its member interest. Under the LLC Act, Congress is allocated responsibility to serve as the voting member of the Nation’s interest in any wholly owned LLC. *Id.* First, the member, or LLC, drafts a resolution and presents it to Congress. *Id.* Second, the Congress considers and votes on the resolution in the same manner provided in the Congressional Rules for passage of resolutions. *Id.* Third, should Congress vote to adopt the resolution, the resolution is sent to the Principal Chief and subject to approval or veto and override pursuant to the Art. VI, Sec. 14 of the Constitution. *Id.*

Thus, in order for the Nation, i.e., Congress and the Principal Chief, to see specific expenses of a wholly owned LLC, they must follow the steps set forth in the LLC Act. For simple

requests, Congress could make a reasonable request to inspect and copy LLC records during ordinary business hours (unless the governing documents provide otherwise). The process for a complete audit of LLC records, the process is more laborious. One, a member drafts a resolution stating their intention for an independent auditor to audit the expenses they want to review. 4 ONCA § 2-941. Two, Congress considers and passes the resolution. *Id.* Three, the Principal Chief approves the resolution, or it is overridden by proper vote of Congress. *Id.* The Nation hires an independent auditor. 4 ONCA § 2-961. The wholly owned LLC provides all the necessary records and documents relating to the expenses in question to the independent auditor. *Id.* The independent auditor performs the audit. Finally, the independent auditor shares the audit report with the Nation.

III. CONCLUSION

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

As to the Gaming Enterprise, Congress may see the specific expenses of the Gaming Enterprise Board through a request by the Speaker requiring the Gaming Enterprise Board to appear before and answer to the Congress in connection with any investigation into the use or disposition of funds within the Board's control. In addition, the Congress or Principal Chief may request the Gaming Commission Chairman to provide a report of any expenses of the Gaming Enterprise. As to wholly owned LLCs, the Nation, through both Congress and the Principal Chief, may see the expenses of a wholly owned LLC by requesting to access the LLC's records during normal business hours or by voting its member rights through a duly adopted resolution requiring an independent audit of the expenses in question.

Respectfully submitted,


Clint Patterson, Attorney General