

Advisory Opinion AO-21-01

March 1, 2021

Question: Can a Tribal Official sell land to the tribe as long as they are not involved in the decision process?

Review of Ethics Code:

Sec 117. 45.3 Code of Ethics

(c) No Tribal official shall enter into any contract for services or goods with any Tribal entity, enterprise, or program for the purpose of either receiving or providing services or goods.

Analysis and Conclusions:

The question is: is real estate "goods" for the purpose of this ordinance? If it is, then the Tribal Official can't enter the agreement to do so. A deed is a form of contract, so the Tribal Official can't transfer land to the tribe.

On the other hand, if we interpret "goods" as NOT including land, then there is no problem, so long as the Tribal Official doesn't have any role in the Tribe's acquisition of the property: the Tribal Official doesn't recommend the purchase, evaluate the alternatives, make a recommendation to purchase it, or have anything to do with the part of the Tribe that buys the property.

In the law, the term "goods" refers exclusively to personal property items, things that are moveable, and DOES NOT include real estate.

Since what is being transferred in tribal lands is, technically, a "possessory interest" rather than the actual land itself, the question now is whether a possessory interest is "goods." Under the law, in my opinion, a possessory interest is NOT goods, because it is not a moveable personal property item, but rather is a right to possess and use land only.

On this interpretation, it is my opinion that a Tribal Official can sell a possessory interest in Tribal lands to the Tribe so long as the official has no role in the transaction from the Tribal government side.



Note: This advisory opinion was based on specific circumstances, the Standards of Ethical Conduct (Cherokee Code Sec. 117-45), and other relevant code provisions and policies in effect on the date the legal analysis was prepared and subsequently released.