

Advisory Opinion AO-21-02

March 17, 2021

Question: Can a Cherokee Boys Club employee run for an elected position on the Cherokee School Board?

Factual background:

The office has been asked to give an advisory opinion on a Tribal employee running for elected office. The specific facts:

- (a) The employee presently is an employee of the Cherokee Boys Club.
- (b) The employee is running for an elected position on the Cherokee School Board.

The employee has asked if the ethics rules of the Tribe prevent such service if he is elected.

Cherokee Code:

The Cherokee Code provision sets out a general rule that a tribal employee CAN hold elective office, subject to exceptions:

Sec. 96-3. - Employee holding elective office.

Any Tribal employee shall be eligible to seek and hold elective office subject to the following conditions:

- (a) An employee shall not serve on any committee with direct supervision or responsibilities over the program, division, or enterprise in which they are employed.
- (b) An employee shall not be compensated by both the Tribal Council or any committee for the same period of time they are compensated by the Tribe for their employment.
- (c) An employee shall not perform in more than one Tribal job at the same time.
- (d) The provisions of this section shall not apply to any person employed by the Cherokee Police Department. (Res. No. 73, 12-20-1971)



Analysis

If the employee is elected to the School Board, then they would be serving as a paid employee of Cherokee Boys Club and as a paid, elected, School Board member. School Board members are classified as employees of Cherokee Central Schools.

Taking the elements of the statute in order:

- (a) An employee shall not serve on any committee with direct supervision or responsibilities over the program, division, or enterprise in which they are employed.

This requires analyzing the duties of an elected School Board member as it relates to this employee's duties in the finance office at the Boys Club.

The elected School Board members have the duties of approving budgets and setting policies and procedures for the school system:

- (b) The Cherokee School Board shall be the governing board responsible for determining the general policies of the Cherokee Central School. The Board shall approve the school budget and formulate and define the administrative policies for the school.

(Cherokee Code, Article II, Sec. 115-8)

While it approves the budget and sets the administrative policies of the school system, the School Board doesn't have any direct supervision of the operations of the Boys Club. The Boy's Club is governed by its own Board of Directors, which sets its policies and procedures.

It is my opinion that a School Board member would not be serving on a "committee" with direct supervision or responsibilities over the finance office of the Cherokee Boys Club and that therefore an assistant finance director of the Boys Club would not be violating this section if they were elected to the School Board.

Taking the next two sections together:

- (c) An employee shall not be compensated by both the Tribal Council or any committee for the same period of time they are compensated by the Tribe for their employment.
- (d) An employee shall not perform in more than one Tribal job at the same time.

These sections prevent "double-dipping" by an employee receiving pay from two different tribal employers at the same time. These issues can be addressed in these ways:

Separate the Pay:

The employee could resolve the issues raised by subsection (b) by analyzing their time and dividing that time between the two Tribal positions so that they do not overlap. So, for example, if the employee is attending a School Board meeting (or other School Board duties) during the working hours for their assistant finance director job, they would take time off from the assistant finance director position while they were undertaking School Board duties. Thus, they would not be being compensated by both employers for the same period of time.

If the employee concluded that they could not separate their time between the two jobs, then they could satisfy subsection (b) by giving up their pay for one of the jobs.

Separate the Duties:

The employee could resolve the issues raised by subsection (c) by carefully separating the two jobs so that the employee is not performing both at the same time. So, for example, if while working as assistant finance director some issue arose about a budgetary policy which had been adopted by the School Board. If the Finance Office workers asked this employee for advice about what the School Board policy meant, the employee would carefully respond to their co-workers that they would not and could not advise about that policy, because to do so would put them in the position of performing the two jobs at the same time.

Conclusion:

In interpreting these provisions, I have taken the general statement of the code as important:

Any Tribal employee shall be eligible to seek and hold elective office subject to the following conditions

I believe that the advice set out above describes this situation and gives meaning to all of the language of this section of the Code.

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.