

Advisory Opinion AO-21-03

April 21, 2021

Question: Can farm equipment owned by the Tribe be used by volunteers to provide garden plowing for some tribal members?

Applicable Charter and Code sections:

Part I, Charter and Governing Document:

Section 16. The Council of the Eastern Band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the Tribe...

Code of Ordinances:

Sec. 117-27. - Use of Tribal vehicles.

Tribal employees and Tribal elected officials shall not use Tribal vehicles for their personal use. Personal use of Tribal vehicles by Tribal employees shall subject them to disciplinary action under the Tribal Personnel Policy.

Analysis and Conclusion:

Equipment owned by the Tribe (whether tractors or anything else) is purchased by the Tribe for the use of the departments who operate it. The equipment is maintained by Tribal employees for the official functions of their department or agency. The costs of repair and upkeep are part of the budget of the department. If the equipment is damaged while being used for official functions, the responsibility for repairs falls on the department and those repair costs may be offset by casualty insurance paid for by the Tribe.

The inquiry revolves around a salutary and very desirable impulse: to assist Tribal members in the spring-time chore of plowing their gardens. Many Tribal members depend on their gardens for healthy food sources and for maintaining their cultural connection to the land.

The inquiry assumes that the tractor and tilling equipment would be operated by qualified volunteers. While not stated in the inquiry, we can assume that the



equipment would be used for garden plowing only during the times that it is not being scheduled for use by the department where it is located. We can also assume that the direct costs of fuel and oil would be borne either as a contribution by the volunteers or by the Tribal members receiving the plowing service. The inquiry doesn't address the issue of responsibility for damage to the equipment caused by accident or misuse.

My analysis is that the use of Tribal equipment for the personal benefit of the Tribal members whose gardens are plowed is not allowed unless Tribal Council authorizes the use of the equipment for that purpose, as provided in Charter Section 16, quoted above. To do otherwise would be to use Tribal resources for personal benefit. The fact that the program would be beneficial to many is a factor in favor of the Council adopting a policy or program of this type. Any such program approved by Tribal Council would surely address the issues of who would schedule the work done with the equipment, who would operate the equipment and who would pay the direct and indirect costs of the plowing program.

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.