

Advisory Opinion AO-19-01

February 29, 2019

Question: If you are a political appointee and you decide to run for elective office, do you have to resign from your position?

Review of Ethics Code:

There are three provisions of the Cherokee Code that have bearing on this inquiry.

Cherokee Code:

Part I, Section 9.

In order to run for or serve as Principal Chief, Vice-Chief or Tribal Council member, a candidate must be an enrolled member of the Eastern Band. For the offices of Chief and Vice-Chief a candidate must also be at least thirty-five years of age by the date of the election and have resided on Cherokee trust lands continuously for at least two years immediately preceding the date of the election. For the Tribal Council a candidate must be at least eighteen years of age by the date of election and have resided in the township which he is to represent for at least ninety days immediately preceding the date of the election.

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.



Sec. 161-3. - Qualification for offices.

(a) In order to run for or serve as the Principal Chief or Vice-Chief, a candidate must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 35 years of age by the date of the primary election; and
- (3) Have resided on Cherokee trust land continuously for at least two years immediately preceding the date of the primary election; and
- (4) Continue to reside on Cherokee trust land during their term of office; and
- (5) Be a registered voter with the Tribal Election Board.

(b) In order to run for or serve as a member of the Tribal Council, a candidate must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age by the date of the primary election; and
- (3) Have resided in the township which he or she is to represent for at least 90 days immediately preceding the date of the primary election; and
- (4) Continue to reside in the township in which the candidate was elected during their term of office; and
- (5) Be a registered voter with the Tribal Election Board.

(c) In order to run or serve as a member of the Cherokee School Board, a candidate must:

- (1) Reside in the community the candidate represents for at least one year immediately preceding the date of the primary election and continue to reside in that community during the term of office; and
- (2) Be at least 21 years of age by the date of the primary election; and
- (3) Have received a high school diploma or the equivalent; and
- (4) Be a registered voter with the Tribal Election Board.

(d) No person shall ever be eligible to file for or serve in any of the above Tribal Office, if:

- (1) The person has been convicted of, pled guilty to, or entered a no-contest plea to a felony; or
- (2) The person has aided, abetted, counseled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or has defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians; or
- (3) The person has been impeached by the Tribal Council or found guilty

- in any jurisdiction to have violated a law that would constitute a violation of Section 17 of the Charter and Governing Document of the Eastern Band of Cherokee Indians; or
- (4) The person has resigned from office while under investigation or under pending charges for fraud, or a violation of the Tribal Charter or Tribal Law.
- (e) No person may file for, run for, or hold more than one Tribal elective office at any one time. However, a person may run for Tribal elected office while holding a different Tribal office, so long as the term of the office currently held will expire prior to or at the same time as the person would assume office if elected to the new office.
- (f) No person is eligible to hold the office for Principal Chief, Vice-Chief or Tribal Council member while simultaneously being a Tribal employee or an employee of a Tribal entity.
- (g) Members of the Tribal Council or School Board who change their residence from the township that they were elected to represent shall be removed from office by the Board of Elections if a petition is filed with the Board by an enrolled member registered in that township and upon such a finding made by the Board of Elections. Tribal Council or School Board members whose residence is challenged by such a petition shall have the right to a hearing by the Board of Elections at which they may present evidence and testimony in their own behalf. The Election Board's decision is the final decision to be made by a Tribal body but may be appealed to the Tribal Court for further review.
- (h) No person is eligible to hold the office for Cherokee School Board member while simultaneously being an employee or student of the Cherokee Central School System.

Analysis of Code Provisions:

The inquiry doesn't specify what "political appointee" position the questioner holds nor what office he or she is seeking. The analysis is generally the same regardless of the answers to those questions, but the questioner should review my analysis and reasoning to be assured that it is accurate in their particular situation.

The most specific Code provision is Section 96-3, which clearly authorizes a Tribal employee to seek and even hold elective office at the same time, within the limits of that section. If a "political appointee" is a Tribal employee, then that section seems to authorize running for office while still holding the appointee position.

The next most specific Code provisions are Section 161-3(e) and (f):

Section 161-3(e) prohibits filing for, running for, or holding two elective positions at the same time, but allows an elected official to keep their present position and run for another elected office so long as the two positions won't be **held** at the same time.

Section 161-3(f) prohibits **holding** the office of Principal Chief, Vice Chief, or Tribal Council while at the same time being a tribal employee or employee of a tribal entity. The language is silent as to running for these offices while being a tribal employee – this clearly implies, given the other provisions of the Code (Section 96-3), that the person could run for those offices while remaining a tribal employee or employee of a tribal entity but that they would have resign their employee position before they took one of these elective offices.

Finally, the most general provisions are Part I, Section 9 and Section 161-3, which set out the qualifications for election. These provisions list what qualifications and disqualifications there are for these different elective offices.

Very importantly, there is no general disqualification for **running** for office based on being an existing tribal employee.

Conclusion:

Based on this analysis, there is no general prohibition for a tribal employee (which is how I am classifying the “political appointee” questioner) seeking elective office. Therefore, I would answer the question “No” and give the questioner a copy of this memo in explanation. I hope that this is useful to you in responding to the inquiry.

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.