

## Advisory Opinion AO 23-01

May 8, 2023

### **Question: Can a Tribal official take a job as the Superintendent of Cherokee Central Schools and continue serving on the Tribe's Election Board?**

#### **Factual Background:**

The person making the inquiry is a regular full-time employee of the Cherokee Central Schools. At the same time, the person has been appointed to and holds a position as one of the members of the Election Board. The position on the Election Board is part time and is compensated by a monthly stipend. This situation does not present any legal or ethical issue.

The person making the inquiry has been offered and intends to accept the position of Superintendent of Schools. As such, the person would be directly reporting to and subject to being supervised by the members of the elected School Board. The question is whether the position on the Election Board would have to be resigned for this person to accept the Superintendent position.

#### **Review of Charter and Code sections:**

There don't appear to be any references in the Charter and Governing Documents, the Code of Ethics, or the Code of Ordinances which directly address this situation.

**Section 96-3(c)** in the Code of Ethics is the closest reference, but it only prohibits holding an *elected* position while that employee holds a regular position with the Tribe:

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

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

(c) An employee shall not perform in more than one Tribal job at the same time.

Neither the Superintendent nor the Election Board positions are elected, so this section does not apply.



**Analysis and Conclusion:**

In the absence of controlling statutory authority, the general principles of freedom of contract, of statutory interpretation, and of encouraging active participation in the election process seem relevant.

The inquiring party holds a position with the school system now and anticipates taking the job of Superintendent. At the same time, the inquiring party holds an appointed position as a member of the Election Board and receives a standard stipend from the Tribe for that work.

The only change in the employee's situation is that she, in the new job, will be reporting to the School Board and those members are elected. In her job on the Election Board, she has the responsibility, with the other Election Board members, of generally overseeing the election process for all elections, including School Board.

It is relevant that the position on the Election Board is only one of six appointed members. While any single Board member is influential, the majority must agree in order to take any effective action. This dilutes the influence of any single member in any matter.

It is relevant that the Code of Ordinances prohibits a tribal employee from simultaneously holding an elected office but is silent on the issue of a tribal employee holding two separate *unelected* positions. By prohibiting the one and being silent on the other issue, I rationally infer that Tribal policy allows the second situation.

As a matter of public policy, encouraging competent persons to take positions in securing elections seems obviously beneficial. Often the most useful potential board members will already have employment and, in fact, be employed by the Tribe in one capacity or another. It seems a waste of the human resources of involved tribal employees to prevent them from contributing in this manner.

It is my opinion that simultaneously holding the position of School Superintendent and Election Board member is not prohibited by Tribal law.