

Advisory Opinion AO 23-02

June 21, 2023

Question: Can an employee serve as interim secretary and also serve as a commissioner of the Tribal Alcoholic Beverage Control Commission?

Factual Background:

A person who is an appointed commissioner on the Tribe's Alcoholic Beverage Control Commission (ABC Commission) is also serving as an Interim Secretary of a division in Tribal government. That person has asked whether such a situation presents an ethical conflict for them. There is no connection between the particular division of which they are Interim Secretary and the ABC Commission. The ABC Commission generally meets every two weeks. It makes policies for carrying out the licensing of ABC outlets and the enforcement of ABC laws. There are five commissioners, appointed by the Principal Chief and approved by Tribal Council. The ABC Commission is an independent agency within Tribal government (Cherokee Code § 18B-200f.). The commissioners are paid, part-time, and all have other employment.

Review of Charter and Code Sections:

The person holds the status of "Tribal Official" because they are an appointed commissioner of the ABC Commission (Cherokee Code § 117-45(a)(1)(c.)). When appointed as Interim Secretary of a division in Tribal government, the person is also a Tribal Official because of that job (Cherokee Code § 117-45(a)(1)(d)). As a Tribal Official, the person is subject to the provisions of the Ethics Code (Cherokee Code § 117-45 et seq.).

Neither job is an elected one, so the Cherokee Code provisions that reference Tribal job holding by an elected official have no applicability (Cherokee Code § 96-3).

The enabling statute for the ABC Commission (Cherokee Code § 18B-100 et seq.) contains provisions prohibiting conflicts of interest by the commissioners and specifically incorporates the Ethics Code of the Tribe (Cherokee Code § 18B-201(b)).



Prior Ethical Opinions

The Ethics Committee has adopted several advisory opinions on this general subject (e.g., AO 19-01; AO 21-02; AO 23-01), but each opinion is limited by its facts and none is specifically dispositive of this inquiry.

Analysis and Conclusion

There is no provision of the Ethics Code that prohibits a person from holding two separate unelected positions. See, eg., AO 23-01 and the analysis there. Presuming that both positions are compensated on a salary basis (not based on the specific hours worked or meetings attended, for example), then there doesn't appear to be a conflict in the compensation methods. Since there is no connection between the division managed by the Interim Secretary and the ABC Commission, there are no apparent conflict-of-interest or self-dealing implications in holding the two positions.

There is no ethical prohibition of this person concurrently holding positions as an ABC Commissioner and as Interim Secretary of a division in Tribal government.

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.