

2015 ONAG 1

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QUESTION SUBMITTED BY: Honorable Geoffrey M. Standing Bear, Principal Chief of the Osage Nation.

This office has received your request for an official Attorney General Opinion related to Article XV, Section 4, Paragraph 4 of the Constitution, which states:

The Osage Minerals Council shall have the power to consider and approve leases and to propose other forms of development of the Osage Mineral Estate. Mineral leases approved and executed by the Council shall be deemed approved by the Osage Nation unless, within five (5) working days, written objection is received from the Office of the Principal Chief that the executed lease or other development activity violates Osage law or regulation.

To which, you ask whether a lease or other development document approved and executed by the Minerals Council is valid if it was never sent to the Office of the Principal Chief to exercise your Constitutional prerogative to determine if the lease or development activity violates Osage law or regulation? You also ask if the existence of this language places a duty on the Minerals Council to transmit a lease or other development activity document to the Office of the Principal Chief to trigger the five (5) day rule?

I. SHORT ANSWER

The Constitution states that the lease or other development document "shall be deemed approved" unless the Principal Chief objects within five working days, so if the Principal Chief does not submit his objection, then any lease or other development document that is approved and executed by the Minerals Council considered valid after five working days. The existence of this language alone does not place an affirmative duty on the Minerals Council to present a lease or development activity document to the Office of the Principal Chief in order to trigger the five day rule. The five day deadline begins to toll after the Minerals Council executes the document, whether or not the document is ever sent to the Office of the Principal Chief.

II. DISCUSSION

Article XV, Section 4, Paragraph 4 of the Constitution provides for checks and balances between the Executive Branch and the Minerals Council. The section gives the Principal Chief the authority to object to a lease or other development activity document if that lease or development activity violates Osage law or regulation. The section is silent on whether the Minerals Council must present the lease or development activity document to the Office of the Principal Chief. The section's only stated affirmative action requirement is the Mineral Council's receipt of the Principal Chief's objection. The Minerals Council must receive the Principal Chief's written objection within five working days. Otherwise, the leases approved and executed by the Council "shall be deemed approved" by the Osage Nation.

When used in statutory construction and referring to a document's status, the term "deem" means "to accept a document or an event as conclusive of a certain status in the absence of evidence or facts which would normally be required to prove that status."¹ Applying that definition to the Constitutional language in question means that, if the Principal Chief does not object within five working days, then all leases and development activity documents executed and approved by the Minerals Council are considered approved by the Nation.

It is interesting to note the Constitutional framer's words in this section when compared to other sections. This section states that the Minerals Council must receive the Principal Chief's written objection within five working days of the Minerals Council's execution and approval of the lease or development activity. It does not state that the Minerals Council must present the lease or development activity document to the Principal Chief for his approval.

In contrast, the framers chose different language when directing how bills would become law. Article VI, Section 13 states that: "Every bill passed in conformity to the rules of the Osage Nation Congress *shall be presented* to the Principal Chief [emphasis mine]." The mandatory "shall" wording is on the presentation of the bill to the Principal Chief by Congress – and not on the conclusiveness of the document's approval, as in "shall be deemed approved". The same duty on the Minerals Council to present a lease or development activity document to the Principal Chief for his approval cannot be inferred by the absence of that same language in Article XV, Section 4, when the framers clearly knew how to create this duty with plain language.

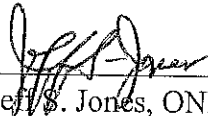
¹ "Deem" Def. 1. *Duhaime's Legal Dictionary Online*. 22 Dec. 2014.

Therefore, the Minerals Council is not constitutionally mandated to present the lease or development activity document to the Principal Chief in order for the lease to be valid.

Likewise, the same can be said for the approval language when compared in both sections. In Article VI, Section 13, states that: "Any bill not returned by the Principal Chief within five (5) days...*after it is presented* becomes law as if signed by the Principal Chief [emphasis mine]." The plain language states that the Constitutional time period begins to run after Congress presents the bill to the Principal Chief. That same language is conspicuously missing in Article XV, Section 4. We cannot infer from silence that the five day time period begins to run only after the documents are presented to the Principal Chief.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General, pursuant to the Constitution that all leases approved and executed by the Minerals Council are deemed approved by the Nation after five working days, unless the Minerals Council receives an objection from the Principal Chief stating that the lease or development activity violates Osage law or regulation. And, the Constitutional language places no affirmative duty on the Minerals Council to present the lease or development activity document to the Office of the Principal Chief in order to toll the five working day deadline.



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