

AUG 19 2015



OSAGE NATION ATTORNEY GENERAL OFFICE

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**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2015-11**

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

This Office has received your request for an Official Attorney General Opinion regarding the uniform application of laws. To which you ask:

Whether the Osage Minerals Council is subject to the Osage Nation Open Meetings Act, 15 ONC § 7-101 et seq. and the Osage Nation Open Records Act, 15 ONC § 8-101 et seq. and if so, how these laws would be enforced?

I. SHORT ANSWER

Yes. The Osage Minerals Council is subject to the Osage Nation Open Meetings Act, 15 ONC § 7-101 et seq. and the Osage Nation Open Records Act, 15 ONC § 8-101 et seq. A member of the public and the Attorney General may file a civil action in the Trial Court seeking enforcement of the Open Meetings Act or the Open Records Act.

II. DISCUSSION

A. Osage Nation Open Meetings Act, 15 ONC § 7-101, as amended.

The purpose of the Open Meetings Act is to ensure the Nation's governmental business is conducted in an open and public manner.¹ To this end, meetings of public bodies of the Osage Nation shall be conducted openly.² "Public body means any official entity in which a quorum is required to conduct public business and which performs a governmental function for the Osage Nation."³

¹ 15 ONC § 7-104(A).

² 15 ONC § 7-105.

³ 15 ONC § 7-104(D).

The Mineral Estate is an essential and unique part of the Osage Nation. The Act of June 5, 1906, (34 Stat. 539), as amended, reserved the Osage Mineral Estate to the Osage Nation. The Constitution of the Osage Nation declares that, as the Mineral Estate of the Osage Reservation is reserved to the Osage Nation, “the government of the Osage Nation has *the perpetual obligation* to ensure preservation of the Osage Mineral Estate.”⁴ To discharge those obligations, the Osage Nation created the Osage Minerals Council as an independent minerals management agency within the Osage Nation “for the sole purpose of continuing its previous duties to administer and develop the Osage Mineral Estate in accordance with the Osage Allotment Act of June 28, 1906, as amended.”⁵ As an independent agency within the Osage Nation created by the Osage Nation to manage the Minerals Estate, the Osage Minerals Council is performing a government function for the Osage Nation. Therefore, the Minerals Council is considered a public body for the purposes of the Osage Nation Open Meetings Act and is subject to the provisions provided therein.

The Open Meetings Act at 15 ONC § 7-111 provides for Act enforcement. Specifically, Section 7-111(A) states:

Any member of the public shall have the right to seek judicial relief for violation of this Act by filing suit in the Osage Nation’s Trial Court. Such actions shall be filed prior to or within thirty (30) days after the violation arises. The Trial Court shall have the power, in its discretion, upon good cause shown, to issue an appropriate order, injunction, or prohibition and to declare any action or part thereof taken in violation of this law void in whole or in part.

Construing from the plain language of Section 7-111(A), members of the public may file a suit in the Trial Court as a claimant alleging Open Meetings Act violations and seeking judicial relief to set aside board actions taken in violation of the Act. The claimant must show “good

⁴ *Const. of the Osage Nation*, Art.XV, §4 [emphasis added].

⁵ *Ibid.*

cause”, or a legally sufficient ground or reason,⁶ to invalidate the board action. Upon showing good cause, the Trial Court may “issue an appropriate order, injunction, or prohibition and to declare any action or part thereof taken in violation of this law void in whole or in part.”⁷ Section 7-111(D) states that the Trial Court may not grant a party any remedies other than those listed in the section. Therefore, the relief in a suit brought by a member of the public enforce the Open Meetings Act is limited to the Court’s voiding the unlawful board action, in whole or in part.

However, the Open Meetings Act at Section 7-110 states that an offense under the Act is considered a violation of Osage Nation law and provides a punishment by a fine not less than \$100 or more than \$500. This offense and penalty section provides an enforcement mechanism for the Attorney General. The Osage Nation Office of the Attorney General Act, at 15 ONC § 3-108(D), gives the Attorney General the authority:

To institute civil actions against any Osage Nation officer, board or commission member, for failure of such officers or members to perform their duties as prescribed by the laws and the Constitution; and to prosecute said officers, board or commission members as prescribed by the laws and the Constitution where such violations have occurred in connection with the performance of such officers’ or members’ official duties.

This section authorizes the Attorney General to file a civil action against Osage Nation officials in Tribal Court for violating the Open Meetings Act and seek the proscribed fine.

B. The Open Records Act, 15 ONC § 8-101, as amended.

The Open Records Act at 15 ONC § 8-102(E) defines “government entity” as:

Any administrative, advisory, executive, judicial or legislative office or body of the Osage Nation, including without limitation, except as listed below, all boards committees, commissions, departments, agencies, *independent agencies* and other instrumentalities whose board of directors are appointed or elected by the Osage Nation [emphasis added].

⁶ Black’s Law Dictionary (6th ed.) 692.

⁷ 15 ONC 7-111(A).

Exceptions to the government entity definition, which exempts the entity from the provisions of the Open Records Act, include corporation or tribal enterprise, limited liability company, limited liability partnership, or any other business entity of the Osage Nation.

According to the Constitution, “[t]he Osage Minerals Council is recognized by the Osage Nation government as *an independent agency* within the Osage Nation...”⁸ The Open Records Act definition of government entity specifically includes independent agencies of the Osage Nation. Therefore, the Open Records Act applies to the Osage Minerals Council.

Section 8-109 of the Open Records Act, as amended, provides for enforcement of the Act. This section allows for any member of the public that has been denied a record request to challenge the denial by filing a claim in the Trial Court. If successful in a claim for access to records under the Act, the Trial Court must award actual court costs, attorney fees and expenses to each claimant. The Act prohibits use of Osage Nation resources to pay fines, attorney fees, costs or expenses awarded by the Court against an employee or official in their individual capacity pursuant to the Act.⁹

Further, Section 8-113 of the Open Records Act provides civil penalties for violations of the Act. For example, employees or other persons who have lawful access to any protected record, and who discloses the protected record, or who intentionally destroys the record, are subject to a civil penalty of not less than \$1000 and not more than \$5000. The same penalty is authorized for a public employee who intentionally refuses to release a record knowing its disclosure is required by a final order of the Court. Identically to the Open Meetings Act, this section providing for civil penalties provides the Attorney General with a means of enforcing the Open Records Act.

⁸ *Osage Const.* Art XV, §4 [emphasis added].

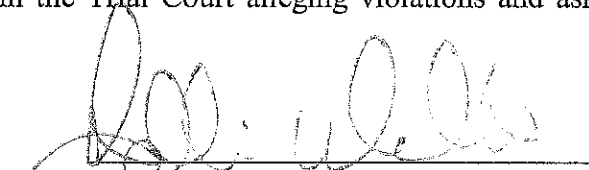
⁹ 15 ONC § 8-113(H).

As cited above, the Osage Nation Office of the Attorney General Act authorizes the Attorney General to institute civil actions against any Osage Nation officer for failure to perform their duty under Osage law.¹⁰ Using this authority, the Attorney General may enforce violations of the Open Records Act by filing a civil suit in Trial Court against a public employee or any other person who has lawful access to any public or protected record asking the Court to impose civil penalties as provided for in the Act.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General, that:

The Osage Minerals Council is included in the definition of government bodies subject to both the Osage Nation Open Meetings Act, 15 ONC § 7-101 et seq. and the Osage Nation Open Records Act, 15 ONC § 8-101 et seq. Both Acts provide that a member of the public may bring a claim in the Trial Court seeking enforcement of their respective provisions. Additionally, both acts include civil penalties for violations, which provide the teeth for enforcement by the Attorney General. The Attorney General Act authorizes the Attorney General to bring civil suits against officers for failure to perform their duties as prescribed by the Nation's laws. Therefore, the Attorney General may also pursue enforcement of the Open Meetings Act and the Open Records Act by filing a civil action in the Trial Court alleging violations and asking for civil penalties.



Holly A. Wells,
Osage Nation Attorney General

¹⁰ 15 ONC § 3-108(D).