



OSAGE NATION ATTORNEY GENERAL OFFICE

Holli Wells
ATTORNEY GENERAL
ᏊᏱᏊᏱᏊ ᏊᏱ

Clint Patterson
ASST. ATTORNEY GENERAL

1223 Grandview
Pawhuska, Ok. 74056



**Trial Court of the Osage Nation
FILED**

SEP 01 2016

BY

SAJ

**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2016- 04**

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

“Is Executive Order 16-04, Executive Branch Operation Funding,
consistent with the Osage Constitution and lawful?”

I. SHORT ANSWER

Executive Order 16-04, the Executive Branch Operation Funding, is consistent with
the requirements of the Osage Nation Constitution and laws.

II. DISCUSSION

Executive Order 16-04 complies with the Executive Branch Division Organization
Act, ONCA 14-47, as amended by ONCA 14-57 (hereinafter the “Act”) as it divides the
Executive Branch’s Constitutionally mandated functions into divisions for appropriations
purposes by the Osage Nation Congress. Further, Executive Order 16-04 is constitutional
as the Act cannot be interpreted so narrowly as to limit the Executive Branch’s ability to
perform its day-to-day functions or perform its Constitutionally required functions.

1. The Executive Division Organization Act.

On August 1, 2014, The Osage Nation Congress enacted the Executive Division
Organization Act, ONCA 14-47, (hereinafter the “Act”), which the Principal Chief

approved into law on August 4, 2014. Shortly after enactment, on September 2, 2014, the Act was amended by ONCA 14-57.

The Act, in summary, requires the Executive Branch is to split its functions into divisions for appropriations purposes. The overall stated purpose was to ensure the Osage Nation provides essential services to its officials, employees, and citizens in the most efficient manner by establishing authority for coordinating delivery of those services for the ultimate benefit of the Nation's citizens." The Act at Section 2. Thus, in that vein, the Act then outlines six (6) divisions within the Executive Branch, authorized and directed division budgets and expenditures, created different categories of division personnel, authorized travel for official business, and mandated division funding to occur on an annual basis. Specifically, Section 4(B) of the Act requires that "[e]ach Executive branch entity shall be assigned to a division for the purposes of budgeting and to promote administrative and spending efficiency unless exempted from a division pursuant to paragraph (D) of this Section or by act of the Osage Nation Congress." Further, Section 8 provides "[d]ivision funding shall occur on an annual basis [and] [a]ny limitations on division spending must specifically be set out in annual division appropriation law." The Act goes on to exempt the Office of the Chiefs and All Executive Branch entities with members comprised of exempt appointed officials pursuant to 19 ONC § 3-105B(5)¹ & C(3) from the outlined divisions.²

¹ 19 ONC § 3-105(B)(5): Persons appointed to boards, commissions, task forces, authorities and other Osage Nation Entities shall be classified as exempt appointed officers.

² Boards, commissions, task forces, authorities, and other Osage Nation appointed officials; individuals classified under this classification should be compensated in accordance with Osage law and are not subject to the Pay for Performance Compensation System.

2. Executive Order 16-04.

On July 15, 2016, the Principal Chief issued Executive Order 16-03, the Executive Branch Organizational Chart (hereinafter “Org. Chart”). Chief’s Org. Chart set out the organization of the Chief’s Office, which separated the Executive Branch into nine (9) divisions. The Executive Order separated the executive functions for FY17 operational funding in Executive Order 16-04 (hereinafter Exec. Order 16-04). Exec. Order 16-04 organized the divisions as: 1) Executive Administration; 2) Child Family & Senior Services; 3) Language and Cultural Resources; 4) Education; 5) Governmental Operations; 6) Health and Wellness; 7) Land Commerce & Agriculture; 8) Boards and Commissions; and 9) Osage News. We understand that the purpose of Executive Order 16-04 was to divide the Executive Branch into divisions while also ensuring that the Executive Branch’s constitutionally mandated services were being fulfilled.

3. Executive Order 16-04 Complies with The Act.

The Principal Chief’s Exec. Order 16-04 complies with the Act because it does not detour from the six divisions listed in ONCA 14-57. The three (3) additional divisions, as explained below, are exempt from the Act.

The Executive Order divides the Executive Branch’s functions into the six divisions outlined by the Act. The Executive Order has simply modified the names of the divisions in the Act, but the functions of the divisions track those outlined. For example, as opposed to stating “Division of Child, Family, and Senior Community Services,” Chief simply titled the division “Child Family & Senior Services;” and instead of “Division of Education and Early Learning,” the division is titled “Education.” There are two (2) division titles that

slightly differ wherein the Executive Order replaced the word “Public Safety” in the Division of Land, Commerce and Public Safety” division with the word “Agriculture;” and didn’t use the words “Preservation, Arts, Heritage” for the division Chief titled “Language and Cultural Resources.” Thus, the shortening of the division titles and adding a different word to one division title cannot be construed to violate the Act. While maybe not the best choice of wording, the division titles are fundamentally the same and therefore, the six (6) divisions created by ONCA 14-57 are in Exec. Order 16-04.

The additional three (3) divisions of Exec. Order 16-04 were exempted from division pursuant to Section 4(D) of ONCA 14-57. The Boards and Commissions and Osage News divisions were clearly exempted in Section 4(D)(2) since those entities listed are boards and commissions and Osage News is under the authority of the Editorial Board, a board exempted under ONCA 14-57. The Executive Administration division is also exempted as it is under the Office of the Chiefs (according to the Org. Chart), and ONCA 14-57 exempted the Office of the Chiefs from division in Section 4(D)(1).

The purpose of the Act was to organize the Executive Branch into divisions for the purpose of budgeting and that is exactly what Exec. Order 16-04 does, it organizes executive departments and offices into divisions for purposes of operational funding (budgeting). Therefore, Executive Order 16-04 complies with the Osage Nation Constitution and Osage law.

4. Executive Order 16-04 is Constitutional

The Osage Nation Congress can establish a structure for the government to function and the Executive Branch is required to follow that structure. However, the Osage Nation Congress is limited in its ability to control how the Executive Branch conducts its day-to-

day operations or prevent it from performing its Constitutional duties. The Act only requires that the Executive functions be split into divisions. The Act does provide broad divisions for several Constitutionally mandated functions, which the Executive has honored. Nonetheless, the Act cannot be read to infringe on the Executive Branch's ability to function. Nor can the Executive Order be read to violate the Constitution or the Act.

The Osage Nation Constitution vests the governing powers into three (3) separate branches: the Legislative, the Executive, and the Judicial. OSAGE CONST., Art. V, § 1. The Constitution further defines the purpose of this separation of powers³ in Article V, Section 2 by requiring the branches "be separate and distinct" while also prohibiting any "person or collection of persons, charged with official duties under one of those branches, from exercising any power properly vested in either of the others except as expressly provided in the Osage Nation Constitution." No branch has authority to thwart the other branch from performing its Constitutional duties. *Standing Bear v Whitehorn*, SCO-2015-01, p. 4, (March 8, 2016 Slip Opinion).

In interpreting the Act, we must assume that Congress acted with a Constitutional intent. *Id.* at p. 3. Moreover, we cannot read the act to "to allow one branch to bring governance and/or constitutionally required programs to a screeching halt." *Id.* p. 11. "Osage governance prior to adoption of the Constitution was often characterized by gridlock and inaction occasioned by power struggles between the executive and legislative branches." *Id.* at 18. Thus, the Supreme Court held that "we must strive for clarity as to where the constitutional lines of authority lie." *Id.*

³ The Separation of powers concept refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another and to prevent the concentration in any one branch. *Standing Bear v Whitehorn*, SCO-2015-01 (March 8, 2016 Slip Opinion).

Under the Constitution, the Principal Chief's role is to be the Nation's "political leader who maintains organizational cohesiveness, develops strategic and policy direction, and represents the Nation." *Id.* at p. 7. Thus, the Executive Branch is charged with the day-to-day operations of the Nation. *Id.* at p. 7, 16-17. Further, the Executive Branch is charged with providing the services provided for under various articles in the Constitution. *Id.*

The Congress is responsible to "enact, by law, an annual expenditure of funds which shall include an appropriation of operating funds for each *branch* of the government for each fiscal year." *Id.* However, the Osage Nation Supreme Court has explained that "[t]he Constitution limits [legislative] authority [by] prohibiting Congress from usurping another branch's responsibilities via legislation" *Id.* at p. 11. In defining that limitation, Congress has the authority to ensure that a program is operating according to Osage law. *Id.* at p. 11. However, Congress cannot control an Executive program as to define how it is specifically implemented. *Id.* at p. 16-17. In *Standing Bear*, the Supreme Court found it was unconstitutional for Congress to outline the minimum qualifications and the duties for an Executive Branch's employee. However, that needs to be balanced against the holding that the Court approved the establishment of the position by Congress in its appropriations law. Thus, the holding espoused by the Osage Nation Supreme Court is that Congress can structure government, but it cannot run the day-to-day operations of the government, which is an Executive Branch function.

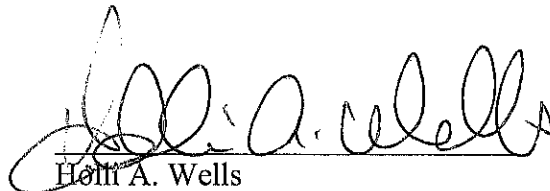
Here, the Act requires the Executive Branch to split into divisions to allow it to track the specific programs and to allow for appropriations. The Principal Chief has issued Executive Order 16-04 to comply with the law establishing divisions. The Executive Order separates the divisions consistent with the Act, although, obviously has changed the

verbiage of the divisions. Nonetheless, the divisions comport with the divisions in the act. Moreover, the Executive Order divides the other Executive Branch's functions, which were exempted under the law, into divisions. Thus, the Act and the Executive Order are constitutional as neither one impinges the authority of the other.

III. CONCLUSION

Executive Order 16-04 complies with the Constitution and laws of the Osage Nation because it organizes the Executive Branch by division for the purpose of operational funding, thus meeting the very purpose of the Executive Branch Division Organization Act. Therefore, the Principal Chief has fulfilled his role to dutifully uphold the law of the Nation and Congress has fulfilled its obligation to structure the government to allow it to monitor governmental programs and effectively fund the Executive Branch.

Respectfully submitted,



Holly A. Wells
Osage Nation Attorney General