



OSAGE NATION ATTORNEY GENERAL OFFICE

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**Trial Court of the Osage Nation
FILED**

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BY _____

**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2017-01
(Slip Opinion)¹**

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

This Office has received your request for an Official Attorney General Opinion regarding the constitutionality of Rule 1.1(2) of the Rules of the Osage Nation Congress in light of Article VII, Section 6 of the Osage Nation Constitution.

To which you ask:

Is Rule 1.1(2) of the Rules of the Osage Nation Congress compliant with Art. VII, § 6 of the Osage Nation Constitution?

I. INTRODUCTION AND SUMMARY

Pursuant to the Osage Nation Office of Attorney General Act, 15 ONC § 3-109, this question was properly submitted for an Attorney General Opinion on the constitutionality of the Congressional Rule regarding Election of Officers (R. 1.1(2)) and the related Constitutional provision found under Art. VII, § 6. As explained below, I am of the opinion that Congressional

¹ NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

Rule 1.1(2) regarding the procedure for breaking a tie in the election of Congressional officers is constitutional.

II. DISCUSSION

As a fledgling tripartite government, there is little case law to form an opinion on your question. However, the Supreme Court made it clear in their recent decision that they intended to make “a uniquely Osage jurisprudence” and declined to consider “the standards and values created by State and Federal governments in creating their constitutional jurisprudence.”² Using the Supreme Court’s wisdom and guidance, once again I will refrain from using State and Federal principals and instead focus on Osage law and jurisprudence to answer your question.

First, the plain reading of the pertinent provisions of the Constitution and Congressional Rules will be discussed. Then, the conflict between the two provisions will be reconciled.

A. Pertinent Provisions of the Osage Nation Constitution

First, Article V, Section 3 of the Osage Nation Constitution states the Constitution “shall be the Supreme law for the Osage Nation.” Article VII (titled “Executive”), Section 6 recites the duties and responsibilities of the Assistant Principal Chief of the Osage Nation. Section 6 specifically states the Assistant Principal Chief shall be an “ex officio member of the Osage Nation Congress.” The section goes on to declare, which is important to our discussion, the Assistant Principal Chief “shall have a right, when in committee of the whole, to join in debate; and, whenever the legislature shall be equally divided, the Assistant Principal Chief shall cast the deciding vote.”

O.N. Const. art. V, § 2 states that each branch of the Osage Nation (Legislative, Executive, and Judicial) shall be “separate and distinct” and “no person . . . charged with official

² *Standing Bear v. Whitehorn*, SCO-2015-01 at 3 (2016).

duties under one of those branches, shall exercise any power properly vested in either of the others except as expressly provided in the Osage Nation Constitution.” Additionally, the Osage Nation Supreme Court has stated “no entity within the Osage Nation has ‘plenary’ authority” and the “Constitution distributes its power, establishing roles and responsibilities and separation of functions through the government.”³

The Constitution at Article VI delineates the power and authority vested in the Legislative Branch. Importantly, the Constitution expressly gives Congress the right to make their own Rules of Procedure.⁴ Policies and procedures are the standard course of action that has been adopted by an organization and the method for carrying it out.⁵ Moreover, not only does the Constitution expressly give Congress the authority to make their own Rules of Procedure, but the Constitution also explicitly confers on Congress the power to elect its own officers.⁶

B. Congressional Rules of Procedure

As expressly provided for in the Constitution, Congress has established its own Rules of Procedure. And as the Constitution also allows, Rule 1 dictates how officers of Congress are to be elected. Subpart 2 of Rule 1.1 of the Rules of Procedure states that a majority is needed to elect an officer and “[i]n the event of a tie, the vote shall be taken again.” That provision, when contrasted with the Constitutional authority given to the Assistant Principal Chief to break a legislative tie, is the crux of the issue at hand.

C. Importance of Separation of Powers

³ *Id.* at 4.

⁴ O.N. Const. art. VI, § 11 (“The Osage Nation Congress shall adoption uniform rules of procedure for conducting the business of the Congress.”)

⁵ *Black’s Law Dictionary*, 1345, 1398 (10th ed. 2014).

⁶ O.N. Const. art. VI, § 8 (“The Osage Nation congress shall select from amongst its members a Speaker, who shall be the Presiding Officer, and such other officers as deemed necessary.”)

In the context of your question, a strict reading of the Constitution would allow the Assistant Principal Chief to have the power to break the tie in any congressional vote – including a tie in the election of Legislative officers – essentially allowing the Executive to decide who is a Legislative officer. However, the Osage Nation Supreme Court stated, when evaluating constitutional provisions, the Court “[considers] each provision as it relates to the others and [gives] each word its plain meaning when read in context to avoid absurd or inconsistent results.”⁷ Using the Court’s logic, when Article VII, Section 6 is read in the context of the rest of the Constitution, it is uncertain how the Assistant Principal Chief, a member of the Executive branch, could have the power to be the deciding vote in electing Legislative officers – a task that was expressly delegated to the Legislative branch by the Osage Nation Constitution. This strict reading of the Constitution leads to absurd and inconsistent results and must be avoided.

A broader reading of Article VII, Section 6, meaning viewing it in the overall context of other Constitutional provisions, also keeps the Constitutional separation of powers between the branches. The concept of separation of powers has been a part of the Osage Nation for many years and was implemented into the Osage Nation’s clan system.⁸ The Osage Nation Supreme Court stated that to “most effectively promote liberty, the executive, legislative, and judicial powers must be separate and act independently.”⁹ Furthermore, the Osage Nation Supreme Court found that the Constitution must be construed “not in terms of individualism, but in terms of community.”¹⁰

Finally, Art. V, Section 2 of the Constitution states that no person of any branch “shall exercise any power properly vested in either of the others except as expressly provided in the

⁷ *Standing Bear v. Whitehorn*, SCO-2015-01 at 3 (2016).

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6.

Osage Nation Constitution.” The power for Congress to create their own Rules of Procedures, and for electing officials, was explicitly given to Congress by the Constitution. Election of officers is an internal matter to Congress as it does not have a direct effect on any other branch or the Osage People. Allowing a member of the Executive Branch the right to cast a deciding vote for an election within Congress itself was not explicitly provided for in the Constitution and violates the separation of powers clause.

D. Congress’s Right to Create their own Procedures is not Unlimited

However, “Congress cannot usurp another branch’s constitutional obligation by legislation.”¹¹ While Congress may be allowed to make their own Rules and Procedures for elected officials, their power is not unlimited. Creating a different tie-breaker rule is only Constitutional in this particular case because the Constitution explicitly gave them the power to do so.¹² Congress cannot override the Assistant Principal Chief’s power to cast the deciding vote in any matter simply by creating a Rule of Procedure allowing for it. Rather, Congress only has the ability to do so for tasks that were specifically delegated to the Legislative branch in the Constitution, such as electing their own officials. For all other votes, the Assistant Principal Chief retains to the power to cast the deciding vote for matters that result in a tie, as provided for in the Constitution.

Once again, Congress is not allowed to make any rule regarding voting ties. It is only Constitutionally permitted when the Constitution has given the legislature the power to do so. Electing members has been explicitly delegated to Congress, as well as the power to determine how to achieve that task.

¹¹ *Standing Bear v. Whitehorn*, SCO-2015-01 at 17 (2016).

¹² O.N. Const. art. VI, §§ 8, 11 (Election of Officers, Rules of Procedure).

III. CONCLUSION

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

Rule 1.1(2) of the Rules of the Osage Nation Congress is compliant with the Constitution of the Osage Nation, specifically Article VII, Section 6 (Office of Assistant Principal Chief).

Respectfully submitted,



Clint Patterson,
Osage Nation 1st Asst. Attorney General