




Trial Court of the Osage Nation
FILED

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BY 

November 13, 2017

**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2017-02¹**

QUESTION 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 wherein you
ask:

Does the Employee Loan Program violate the provisions of Article X,
Section 5 of the Osage Constitution by being a “special advantage of
services” or does the program fall properly within the definition of
“employee benefits”, thereby exempting the program from the scope of the
Constitution’s prohibition?

I. SHORT ANSWER

No. After the change in policy and procedure by the Treasury on August 1st, 2017, the
Employee Loan Program, “Program”, does not violate Article X, Section 5 of the Osage Nation
Constitution.

II. DISCUSSION

Prior to August 1st, 2017, my answer may have been different. After researching why and
how the employee loan program originated, and the loan program’s implementation over the past
several years, it would have been much more difficult to determine the lawfulness of the Program.

We first look to the Program’s initiation. Some time prior to July, 2004, Anthony
Whitehorn started the Program, with the approval of the Osage Tribal Council, “to improve the

¹ Incorrectly numbered in Slip Opinion as ONAG-2017-03.

economic well-being of the Osage Nation...with the intention of establishing and operating a Certified Community Development Financial [I]nstitution.”² Obviously, some thirteen years later, we do not have a Certified Community Development Financial Institution. However, there is some credence that the Program is improving the Nation’s economy. According to Ms. Tasha Fox, Osage Nation Comptroller, the Program earned the Nation between \$36,000.00 - \$37,000.00 in Fiscal Year 2017.

The Program was also developed with the goal of protecting employees from “predatory lenders”.³ In speaking with our Nation’s Treasurer, Samuel Alexander, he agrees the Program does help our employees who need small loans to avoid the predatory lenders that are aplenty in our community and take advantage of Osage Nation employees with their exorbitant interest rates.

When I interviewed others involved with the employee loan process, most were very much in favor of doing away with the Program due to the amount of work involved and the undue burden in administering the Program. This dissatisfaction prompted the Treasury Department to conduct a review of the loan process. The review uncovered deficiencies in the Program guidelines which led to Program abuse by Osage Nation employees and an administration headache.

The Treasury Department, with the assistance of the Executive Branch, moved swiftly to rectify these deficiencies. On August 1st, 2017, the day before you asked for this Opinion, the Treasury Department made significant changes to the Program’s loan criteria. The changes are as follows:

1. An employee may only take one loan out at a time.
2. Loan requests are only made in \$50.00 increments.
3. An employee must have at least forty hours of accrued PTO to guarantee the loan.
4. Four pay period deduction is mandatory.
5. The loan may not be paid off early.

While the changes in loan criteria may be intended to relive the administrative burden, the requirement in number three above, mandating an employee must have at least forty hours of accrued PTO, in my opinion, takes the employee loan program out of the realm of a “special advantage of services” and makes it an “employment benefit.” Now the program is similar to other employee benefit programs, such as half-price meals at the Osage casinos, free tickets to the Tulsa Shock, and incentives for employee cell phones.

III. CONCLUSION

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

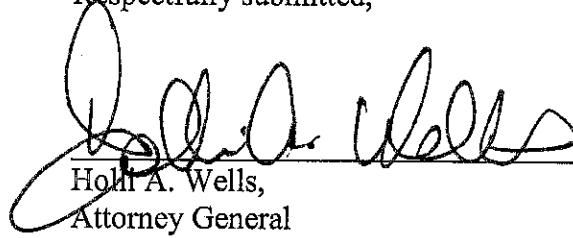
The revised Employee Loan Program is an employee benefit and not a special advantage

² Osage Nation Treasury Department, *Osage Nation Employee Loan Policies and Procedures*, Procedure No. 13-02, 3.

³ *Ibid.*

of services that would be in violation of the provision of Article X, Section 5, of the Osage Nation Constitution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Hollis A. Wells", is written over a horizontal line. The signature is fluid and cursive, with a large initial "H" and "W".

Hollis A. Wells,
Attorney General