

APR 22 2022

BY

T: 918-287-5514  
F: 918-287-5468

1071 Grandview Lane  
Pawhuska, OK 74056



April 22, 2022

**OPINIONS OF THE ATTORNEY GENERAL  
OF THE OSAGE NATION  
ONAG-2022-01<sup>1</sup>**

**QUESTIONS SUBMITTED BY:** The Honorable Angela Pratt, Speaker of the Osage Nation Congress.

This Office has received your request for an Official Attorney General Opinion concerning appointment of an “Acting Treasurer” and the qualifications a person would possess in said designation.

**I. QUESTIONS AND SHORT ANSWERS**

**1. What authority does the “Acting Treasurer” have under Osage law?**

An individual designated and serving as the “Acting Treasurer” during a vacancy in office possesses the same general authority as an appointed and confirmed Treasurer regarding duties and obligations necessary to efficiently, and without interruption, run the Osage Nation government.

**2. Under the Osage Constitution and the Osage Nation Code, is this an interim appointment that will be deemed rejected if not confirmed by the Osage Nation Congress during the current regular legislative session?**

No, the designation of an “acting” official is not an appointment; and thus, would not expire in the manner proscribed in the Osage Nation Constitution and the Osage Nation Code.

---

<sup>1</sup> 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.

## II. DISCUSSION

In writing this opinion, we are guided by the unique Osage value *haskah* “to do one’s best,” and the fundamental values mandated by our Nation’s Constitution, “Justice, Fairness, Compassion and Respect for and Protection of Child, Elder, All Fellow Beings, and Self.” *Osage Const. pmbl.* Established Osage jurisprudence clearly mandates the Osage Nation government operate in an efficient manner for the benefit of the Osage people. “The Osage Constitution [...] require[s] government efficiency and prohibits gridlock and inaction.” *Standing Bear v. Pratt*, SCO-2016-01, page 21. “[T]aken as a whole the Constitution is designed precisely to promote government efficiency and prevent gridlock and inaction.” *Id.* In sum, “[g]overnmental inefficiency, gridlock and inaction would violate both the spirit and letter of that foundational principal of our Constitution.” *Pratt* at 21 - 22.

### 1. Authority of an “Acting Treasurer”.

Question One asks what authority does the “Acting Treasurer” have under Osage law. As this is a novel question under the laws of the Osage Nation, this Office turns to the Osage Nation Constitution first, prior to any Osage Nation Supreme Court opinions, and the Osage Nation Code.

First, while this Office’s analysis would normally include a synopsis regarding Osage culture and tradition, in this particular case, such analysis is unnecessary since the Osage Nation, in adopting the new Constitution in 2006, rejected the tenuous pattern of prior Osage governance and “embarked upon a new path under a new constitution with features unique to the interests and vision of the Osage people.” *Standing Bear v. Whitehorn*, SCO-2015-01, 24 (2016). As cited in the introduction of this opinion, the Osage Nation Constitution (the “Constitution”) provides the Osage people adopted the Constitution “based on centuries of being a People, [to] strengthen our government in order to preserve and perpetuate a full and abundant Osage way of life that benefits

all Osages, living and as yet unborn.”<sup>2</sup> Our Constitution is one that demands efficiency and continuity of government. *Standing Bear v. Pratt*, SCO-2016-01, at 21. To allow our government to be stalled or crippled by a single vacancy in office, contradicts the intent of the Osage People when they adopted the Constitution because it specifically provides for acting for the good of the whole, accountability, vacancies and ethics. Therefore, “The Osage Constitution [...] require[s] government efficiency and prohibits gridlock and inaction.” *Id.* at 21.

The Constitution establishes a Department of Treasury, and provides the Principal Chief with the advice and consent of Congress shall appoint the Treasurer. The only power expressly delegated to the Treasurer in the Constitution is the “mandate that an annual financial statement for the Osage Nation government be audited by a Certified Public Accountant approved by the Congress or by committee of the Congress and presented to the Congress in a timely manner.” *Osage Const. Art. VII, § 13*. The Constitution further provides the Congress to prescribe and define the Treasurer with additional powers and duties

The powers and duties of the Treasurer which are not constitutionally-enumerated are those prescribed by Congress in law. See 15 ONCA §2-311. Since the facts and circumstances will dictate what power and duties are necessary and vital to maintain an efficient and uninterrupted government, this Opinion cannot classify those powers or duties which are vital from those that are not.<sup>3</sup> Further, since the Department of Treasury has expertise in this field, should a situation arise regarding one of these powers, our Office would naturally defer to the opinion of the Department of Treasury unless the legality of any such power is in question.

---

<sup>2</sup> Cf. the 1861 Osage Nation Constitution that provides the Chief Magistrate shall appoint a Treasurer, who shall act as a legal advisor to the Chief Magistrate (*1861 Constitution, Art. II, § 4*); and the 1881 Constitution that provided the Osage National Council should appoint a Treasurer for a term of two years, and that the Treasurer was to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the National Council. *1881 Constitution, Art. IV, § 19 & 22*.

<sup>3</sup> It is worth noting, this is not the first time in recent history the Osage Nation has been without an official Treasurer. In 2014, then Treasurer Callie Catcher resigned from office and Controller Chad Cobb served as an acting Treasurer during the vacancy. For further explanation, see <https://osagenews.org/catcher-announces-resignation-as-osage-nation-treasurer/>.

While Congress has the ability to pass legislation mandating that certain vital actions may only be performed by a confirmed Treasurer and not by an “interim” or “acting” Treasurer, Congress has not exercised this power. In other words, Congress could delegate specified tasks to the Treasurer as not being vital to the continuity or efficiency of the Osage Nation Government. If so prescribed by the Congress, these non-vital tasks could be potentially outside the scope of an acting or interim Treasurer’s authority. However, as mentioned above, each case mandates careful consideration of the facts and circumstances present and the power(s) involved to determine which said power(s) are vital to the continuity and efficiency of the Osage Nation Government. Similar to the foregoing hypothetical, Congress has not specifically exercised said power, so further discussion is not warranted. Thus, an acting Treasurer, in general, possesses the same authority as a confirmed Treasurer.

## **2. Expiration of an “Acting Treasurer” designation.**

Question Two asks under the Osage Constitution and the Osage Nation Code, is this an interim appointment that will be deemed rejected if not confirmed by the Osage Nation Congress during the current regular legislative session. Because an “acting” designation is not analogous to a nomination or appointment, an “acting” designation would not expire at the close of a Congressional session as provided in the Constitution for nomination or appointments.

The Treasury law expressly provides how the Principal Chief fills a vacancy for the Office of Treasurer. *15 ONCA §2-305*. The Principal Chief must submit a signed “formal written transmittal” to the Speaker identifying the person appointed. “No appointment shall be ripe for confirmation consideration by the Osage Nation Congress without compliance with this section.” *Id.*

Specific to the question at hand, the Principal Chief has not complied with Section 2-305 by submitting a written transmittal to the Speaker naming an appointee. The Principal Chief only

submitted a designation of an “acting” Treasurer. According to the Treasury Law, this is not a proper appointment and it is not ripe for Congressional confirmation consideration during the current regular session. If Congress cannot consider the designated person as an appointment, then it follows that the “acting” designation cannot transform into an “interim” appointment.

This warrants consideration as to when an “acting” designation expires. An “acting” designation would expire naturally when the office is filled in the manner provided by the Constitution and Treasury Law wherein the Principal Chief sends a signed written transmittal to the Speaker naming an appointee. Alternatively, because the Treasurer, an office under the Executive Branch, serves at the pleasure of the Principal Chief, the Principal Chief may withdraw the “acting” designation at his or her discretion. *Osage Const. Art. VII, § 15.*

### **III. CONCLUSION**

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

A designated acting Treasurer, while filling in for a vacant office, possesses the same general authority as a Treasurer that has successfully been confirmed by Congress. An acting Treasurer designation is not an appointment to office; and thus, it would not expire in the manner provided in the Constitution for interim appointments. Therefore, it is the opinion of the Attorney General, the Principal Chief’s appointment of an “acting” Treasurer is supported by the Osage Nation Constitution and the precedent of the Osage Nation Courts, which both require efficiency and accountability in administration of our government and prohibit gridlock and inaction.

Respectfully submitted,



Clint Patterson, Attorney General