



Osage Nation  
Office of the Treasurer

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November 9, 2011

**Section 23 of Article VI within the Constitution of the Osage Nation  
Treasury's Perspective**

Principal Chief Red Eagle and Speaker Branstetter,

Our Osage Nation government has had issues in the past with utilizing the language in section 23 of article VI of our Constitution (hereafter "Section 23"). Also, our government is greatly acknowledging the idea of capital expenditures, versus operating expenditures, and utilizing unspent funds from prior fiscal years. As the Treasurer and Chief Financial Officer with the Constitutional duty to administer fiscal policy, I am offering my perspective on Section 23's language, capital expenditures, and unspent funds which I hope will alleviate ambiguities and provide some uniformity in utilizing this language between all branches of our government.

**Section 23 of Article VI states:**

**"The Osage Nation Congress shall 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. The annual budget shall not exceed projected revenues."**

**Treasury Perspective**

After reading this section, I read language within Section 23 that establishes both Directives and Restrictions that are consistent with common business practices, with exception of law-making, and the basis of accounting that is required by governmental entities. I read the following Directives and Restrictions within this section to be:

- (Directive 1) "Congress shall enact, by law, an annual expenditure of funds ..."
- (Directive 2) "...an appropriation...for each branch of the government..."
- (Restriction 1) "...an appropriation...for each fiscal year."
- (Restriction 2) "The annual budget shall not exceed projected revenues."

Regarding Directive 1, I read this statement to direct the enacting or appropriating responsibility and the method which is with Congress and by a law, respectively.

Regarding Directive 2, I read this statement to direct the purpose in which an appropriation of funds must be enacted, which is for each branch to administer. Also, I

read an appropriation provides the authority to each branch of government to utilize funds for fiscal year expenditures.

Regarding Restriction 1, I read this statement to restrict an appropriation (i.e. provision of authority) to a certain time period which is a fiscal year. Thus, an appropriation must be for a fiscal year and cannot extend beyond a fiscal year, thus has a fiscal year limitation. The Osage Nation's fiscal year is October 1<sup>st</sup> through September 30<sup>th</sup>, thus establishes the time period and limitation for appropriations. Furthermore, the end of the fiscal year would be the key-date or deadline for utilizing an appropriation of funds for expenditure.

Regarding Restriction 2, I read an "annual expenditure of funds" and an "annual budget" to mean the same thing and that this statement restricts the funding of each branch's projected annual expenditures (i.e. annual budget) to a fiscal year's projected revenues.

With the exception of law-making, this assigned responsibility and authorization to expend funds is a very common business practice regardless of type of entity (government, not-for-profit, for-profit, etc.). Also, the concept of matching a fiscal year's projected revenues with a fiscal year's projected expenses is consistent with the Matching Principle of accrual accounting which the basic concept is "*revenues should be matched against the expenses that generated those revenues and recorded in the period expenses were incurred.*" In other words, both expenses and revenues should be recognized in the reporting period, at least fiscal year, in which they are realized.

### **Capital Expenditures**

Capital expenditures are purchases or acquisitions of assets that have an economic useful life of more than one fiscal year. Regarding capital expenditures versus operating expenditures, it has been argued that since the Constitution only refers to "operating funds" being appropriated using projected revenues that using projected revenues for capital expenditures is not necessary. Moreover, I presume this argument is that capital expenditures can be performed without an appropriation of projected revenues since Section 23 does not in particular mention capital funds or capital expenditures being appropriated. I'd disagree with this argument and offer the below perspective on capital expenditures.

First, although the first sentence within Section 23 only specifies an appropriation of "operating funds," this language can and must include appropriated funds for capital expenditures. In particular, the language says "...*which shall include...*" rather does not say "...*which shall only include...*" Second, both operating expenditures and capital expenditures of a fiscal year are essentially expenditures within the overall fiscal year's (annual) expenditures thus must be included in one comprehensive Annual Budget. Third, as a check-and-balance reason, capital expenditures must be a part of the comprehensive fiscal year's (annual) budget appropriation in order to avoid un-

appropriated expenditures for capital assets. As such, I read Section 23's language to also include capital expenditures in our government's projected "annual expenditures" or "Annual Budget" which must utilize projected revenues as funding which would be consistent to Restriction 2 above.

### **Unspent Funds**

Our government is entertaining the concept of utilizing "*received but unspent prior fiscal year funds that are on deposit*" for current fiscal year expenditures and referring to these funds with different names. I suggest that our branches refer to these funds as Treasury Funds as I plan to utilize this term going forward. I believe Treasury Funds are generated by one of the following instances:

- Received tribal revenues that were not appropriated for a fiscal year's expenditures.
- Received tribal revenues that were appropriated but were not encumbered for use prior to the end of the fiscal year.

The primary terms to understand from above statements are "received" and "tribal revenues." In particular, "received" is used to emphasize what funds have been realized and "tribal revenues" is used to not be confused with our awards, grants, or any other externally-stipulated funding. The secondary terms to understand are "not appropriated" and "not encumbered." These terms refer to the lack of "intent and utilization" of tribal revenues for expenditures. When not appropriated, our government did not have any intent to use tribal revenues for expenditures within a fiscal year. When appropriated but not encumbered, our government did have the intent but did not actually utilize or carry-out the intent to use tribal revenues for expenditures by the end of the fiscal year. Either way, our government will have an excess of received-tribal revenues at the end of the fiscal year.

Furthermore, as I have detailed above my perceived Restrictions within Section 23, it would appear that the "period-of-availability" for appropriating and utilizing (i.e. encumbering) a fiscal year's revenues for expenditures lapses at the end of the fiscal year. Thus, the tribal revenues not utilized within the fiscal year for expenditure (i.e. Treasury Funds) cannot be appropriated again as revenues for expenditure in subsequent fiscal years since it has already been realized within a previous fiscal year.

### **Conclusion**

I do want to emphasize and comment on Principal Chief Red Eagle's perspective of this Section from his veto message related to ONCA 11-123 since it is consistent with my perspective on this Section which was:

*“...I read Section 23 of Article 6 of the Constitution to require that our tribal government’s budgeted expenditures for a fiscal year be restricted to contemplated/forecasted earnings and receipts of monies from outside/unrelated parties.”*

In the Principal Chief’s perspective, he does add an additional concept that must be understood which is “revenues can only be generated from parties outside the Osage Nation’s departments and entities.” More specifically, if an Osage Nation entity had exchange of monies with another Osage Nation entity, the monies would not be considered revenue rather it would be considered a related-party transaction and recorded as an Inter-fund transfer in accordance with accounting standards. **Ultimately, my perspective on Section 23’s language is that an appropriation can only use a fiscal year’s projected revenues and must provide authority to a branch of our government to utilize projected revenues for their projected fiscal year expenditures.**

Respectfully,



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