

OSAGE NATION CONGRESS



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D. Michael McBride, III
Crowe & Dunlevy, P.C.
500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103-3313

Dear Mr. McBride:

The Osage Nation Congressional Affairs Committee has directed me to contact you in reference to some outstanding legal issues. Your advice on the following matters is requested:

1. Review the attached removal language drafted by a Member of the Osage Congress, and make recommendations for improvement if needed. The Congress must put in place a procedure for removal of elected officials to satisfy due process in accordance with Article VI, Section 17 and Article XII of the Osage Nation Constitution.
2. State the options, legal or otherwise, available to the body of Congress when the Executive branch expends money without appropriation which is a direct violation of Osage Nation law. *See ONCA 07-05 and ONCA 06-02.*
3. State the options, legal or otherwise, available to the body of Congress when the Executive branch delays the implementation of the law for extended periods of time (in excess of 6 months) or fails to implement the law.

The Osage Nation Congress has become aware of several instances where money is being allocated to Osage government departments or programs by the Treasurer without an appropriation, as required by law. As the body charged with oversight of the Nation's assets and appropriations, the Congress is concerned about these circumstances. There are also several instances where the Executive branch has delayed or failed to implement

the law. Two of those instances are the Independent Press Act and the Office of Fiscal and Performance Review, which are both now in court. There appears to be a recurring pattern of delay by the Executive, and the Osage Nation Congress requests your assistance in defining its options.

Please contact me with any questions or concerns you may have regarding this request.

Best Regards,

A handwritten signature in cursive script, appearing to read "Loyed E. Gill, III".

Loyed E. Gill, III

:Enclosure

8.1 Removal

1. Motion for removal of elected and appointed officers

a. Any motion for removal of elected or appointed officers of the Osage Nation may only be made during a regular session of Congress or during any special session called for that purpose. Such a motion shall satisfy all of the following requirements:

1. It shall be in writing
2. It shall state the name of the member making the motion
3. It shall state the name of the elected or appointed official who is alleged to have committed a violation of law or standard of conduct
4. It shall set forth allegations that, if true, would constitute a violation of law or standard of conduct. The allegations shall be stated with sufficient clarity and detail that to enable a Select Committee of Inquiry to make a finding.
5. It shall state the date(s) of the alleged violation(s). No violation alleged to have occurred more than 24 months prior to the making of the motion shall be considered.
6. It shall include a statement that the allegations are true of the person's own knowledge or that the person believes them to be true, and shall be signed by the person under penalty of perjury.

b. The motion shall be based on removal for cause, including willful neglect of duty, malfeasance in office, habitual abuse of alcohol or drugs, inability to meet the qualifications to serve, conviction of a felony or conviction of a misdemeanor involving moral turpitude while in office, undermining the integrity of the office, disregard of constitutional duties and oath of office, arrogation of power, or abuse of the government process.

c. If the motion is made within 60 days prior to an election at which the subject of the motion is a candidate for elective office, the motion is out of order and may be re-filed following the election, with the period of time for filing set forth in Section 1 (a) (5) extended for 60 days.

c. On the first day of session following the motion, the motion shall be reviewed by the Clerk of the Congress to ensure all requirements of the motion are met. The Clerk may consult with the Legislative Counsel to make that determination. The Clerk shall then declare the motion in order, or declare the

motion out of order, returning the motion to the motion maker and citing deficiencies in writing.

d. On the second day of session following the motion, the motion shall be placed on the agenda by the Speaker. The motion shall require 8 affirmative votes to pass.

2. Select Committee of Inquiry

A Motion for Removal shall only be in order only after procedures (a) through (d) below have been completed.

a. An affirmative majority of members present shall vote to form a Select Committee of Inquiry. The motion to form a Select Committee of Inquiry shall be in writing and contain a list of allegations against the subject of the inquiry. Any vote on such a motion shall take place on the next legislative day following the motion.

I. The Select Committee of Inquiry shall be appointed by a Justice of the Supreme Court of the Osage Nation chosen by the Chief Justice. Such appointments shall be made within 10 days of the passage of the motion.

II. The committee shall consist of no fewer than three and no less than five members of Congress. Any member making a motion for removal shall be ineligible to serve on a Select Committee of Inquiry created as a result of their motion.

III. Any solicitation of the Chief Justice by a member regarding the appointment process shall be considered misconduct.

IV. All proceedings of the committee shall be held in Executive Session, with the exception of any vote regarding a recommendation to the Congress or the approval of a committee report. Any and all proceedings shall be considered confidential. The committee report shall be public.

V. The committee may retain independent counsel when necessary.

VI. The committee shall meet only when Congress is in session.

VII. The committee may adopt additional rules for procedure, provided those rules are not in conflict with the rules of the Congress or other applicable law.

VIII. The committee shall have subpoena power as prescribed by Osage law. *(Note to draft readers: this will require an amendment to the Subpoena law)*

b. The Select Committee of Inquiry shall elect a chairperson, and that chairperson shall have the right to enter debate and to vote.

c. The committee shall conduct a comprehensive investigation limited to the allegations listed in the motion for removal.

d. The committee shall submit its findings and recommendations to the Congress, including whether sufficient grounds exist for the Congress to consider a trial for removal. On the next legislative day or at any time thereafter during that session, a written motion to conduct a removal trial listing all allegations shall be in order. Such a motion shall be amendable, and require 8 votes to amend or pass. No allegations may be added that are not found in the original motion for removal.

e. The committee shall disband after submitting its findings and recommendations.

3. Rights of elected and appointed officials during hearings and trial.

a. Elected and appointed officials who are the subject of removal hearings shall have the following rights.

1. Subject shall receive advance notice of hearings and is permitted to attend all hearings, including those held in executive session.

2. Counsel for the subject is entitled to receive documentary evidence in advance of the hearings, object to the admissibility of evidence, question witnesses, and respond to the committee's final report.

4. Upon a successful motion to hold a removal trial, the Speaker shall solicit the signatures necessary to hold a Special Session solely for that purpose. Such a session shall not be held less than 7 calendar days after a successful vote to hold the removal trial.

5. The removal trial shall be public.

6. The presiding judge shall be an Osage Nation Supreme Court Justice, designated by the Supreme Court. Any Supreme Court Justice appointing the original Select Committee of Inquiry shall be ineligible to preside at the removal trial.

7. Allegations heard at the trial shall be limited to those allegations found in the motion to hold a removal trial.
8. Any judgment of removal shall require an affirmative majority of 5/6th of the members of the Osage Nation Congress. Such a vote shall occur on the next legislative day following the completion of the removal trial.
9. The Osage Nation Congress shall reach a judgment for removal only when offered clear and convincing proof that misconduct resulted in injury to the Nation.
 - a. The Congress shall consider first whether any of the evidence, standing alone, rises to the level of impeachable conduct. If an individual act warrants removal, members may rely on that evidence without regard to a pattern of conduct.
 - b. If the individual acts standing alone do not rise about the threshold for removal, then the cumulative weight of the evidence and the existence of an overall pattern may be considered. Members shall consider whether a series of repeated acts are mistakes or accidents, or are intentional and therefore more serious.