

NOTES TO THE NATION, AUGUST 2, 2009

OPINIONS RECEIVED FROM CONGRESSIONAL ATTORNEY

The Congress received two letters from our counsel, Crowe & Dunlevy, in response to questions asked by the Congressional Affairs Committee.

Basically we had asked for their opinion and advice on two matters: 1. Options available to Congress if the Executive Branch expends funds without a proper appropriation or fails to implement a legislative act, and, 2. A review of a proposed draft on removal legislation.

LETTER DATED JULY 31, 2009 Re: Response to Question regarding the Appropriations Bills and Implementation of Legislation.

This letter contains information of attorney-client privilege so I will summarize and comment only on those matters already discussed in public or portions not of a sensitive nature. The attorney reviewed general issues without being exhaustive, in order to save money but still provided basic options that could be explored further at a later date.

ISSUES

FAILURE TO COMPLY WITH APPROPRIATIONS ACTS

Based on his review of the Constitution and the Treasury Act our attorney concludes: “[it is Osage law that the Treasurer can expend funds in an amount not to exceed and only in the manner that has been appropriated by the Congress, with the limited flexibility to shift up to 10% of funds in any single line item, among other items in that appropriation.”; “It is also generally held that the executive branch cannot transfer funds from appropriated items to non-appropriated items, reallocate funds, or deviate from the approved budget without legislative approval.”

He reinforces the idea that under the Constitution and the Treasury Act, Congress has the authority and obligation of oversight of the expenditure of the Nation’s funds. Remedies are discussed including: oversight hearings, judicial remedies and a footnote reminds us that Art.XII of the Constitution grants removal power to the Congress over “Osage Nation Officers.”

FAILURE OF THE EXECUTIVE TO TIMELY IMPLEMENT LAWS

This portion addresses the concern of Congress that the Executive may thwart the will of Congress by refusing to implement any law with which he disagrees.

I regret that most of this portion of the letter must be kept confidential since it may become part of the strategy Congress will use.

Remedies are discussed up to, and including, removal from office in extreme cases. The balance of the advice in this section and the conclusion amplifies and reinforces the obligation and authority of oversight that is given to Congress and suggests that it may be our most effective tool in encouraging compliance.

LETTER DATED JULY 30, 2009 Re: Response to Question regarding the draft of proposed removal legislation.

This question was added at the end of our Congressional Affairs Committee at the request of a Congressman who was not a member of the committee.

Article XII – Removal: The portion of the Constitution dealing with removal of elected and appointed officers of the Osage Nation specifies the grounds, and rules and procedures concerning removal proceedings. It provides that Congress may prescribe additional rules and procedures.

The draft legislation attempts to make additional rules. The response from our attorney points out many issues—some of which could be limitations on removal—that need further study. Since this legislation is in the preliminary stage we will review at a later date.

MORE ON CONGRESSIONAL OVERSIGHT

Oversight of the spending of the Nation’s money and reviews to see that laws are implemented according to legislative intent is a responsibility of Congress. It is an obligation of Congress and a part of our duty that has been the most strongly resisted by the Executive Branch, but it is a duty that we should not fear or hesitate to enforce.

There seemed to be confusion in the Congress as to the meaning of oversight even after we were in office two years. I remember one Congressman commenting that he had completely read the Constitution and he never found the word “oversight” once. Of course, it is one of the implied powers of Congress.

The Office of Fiscal and Performance Review is an arm of the Congress that is a tool that aids the Congress in fulfilling its oversight duties. It exists only to improve accountability and transparency in the Osage government. The work of this department has been stalled nearly since its inception by a lawsuit filed by the Chief.

You may recall the incident in July 2008 when the Congress exposed the accounting irregularities at the casinos. We were criticized, even in the Osage News. Although there were attempts to play down the severity of the problem, it has still not been resolved. The accounting firm of Joseph Eves was called in to help get things in order **and they are still working on it**. I predict the cost to the Nation to be over \$ 1 million dollars before they finish. Unfettered oversight by the OFPF might well have prevented this from ever happening.

SUGARLOAF MOUND PURCHASED BY THE OSAGE NATION

It was announced this week that the Chief had purchased the Sugarloaf Mound in St. Louis.

This is a very controversial issue for several reasons, some of which are: Questions as to whether this is an Osage Mound, no money was appropriated for the purchase, purchase not authorized by Congress and questions about spending Osage money in St. Louis when we have unmet needs here.

Reportedly the Chief went to St. Louis sometime in December 2008 and met with people there in discussions about an Indian mound in the city limits of St. Louis, Mo. It is said to be the only remaining mound of the 40 that once were located in the city. I don't know what or why assurances were made for the Osage Nation to get involved, only that the meeting occurred.

During the month of March this year, the Historical Preservation Director, Andrea Hunter, met with the Cultural Committee of the Congress and gave a presentation encouraging Congress to appropriate money to buy the mound called Sugarloaf Mound. Indications were that an option had been purchased and that time was of the essence. The proposal didn't make much progress in the committee, but during the discussion it was estimated, by a member of Congress, the future development costs could reach 2 to 3 million dollars after the initial cost of \$250,000.

Shortly thereafter, Congress began receiving letters of support encouraging us to authorize the purchase and some mentioned and praised Chief Gray's involvement. The letters were from the St. Louis area and some were from entities that might profit from the development.

A bill was prepared by the Executive Branch that intended to provide \$234,000 for the purchase of Sugarloaf Mound by taking money from Grants Management/Development Fund, Senior Services (Title IV), Boys and Girls Club of Pawhuska and Pawhuska Kids Kampas. The bill didn't get anywhere in the Congress; however, to me it was a clear indication that the Executive Branch acknowledged there was no money appropriated that could be properly used for the purchase of Sugarloaf Mound.

The next thing I heard about Sugarloaf Mound was the announcement that it had been purchased. Later I was told that money was taken from the Property Department budget. Money had been appropriated in that budget to purchase necessary office space in the Pawhuska area, as I recall. Certainly there had been no discussion of Sugarloaf Mound during the budget process.

To be continued.....

CHIEF GRAY SPEAKS ON STRANGE TOPIC

Yesterday Chief was slated to speak at the Native American Journalists Association in Albuquerque, NM. You won't find any advance notice of this in the Osage News or on the tribal website. I submit that is because the topic might be viewed locally as hypocrisy. We know about it only because of an alert Osage citizen's report.

As you know, the Chief had vetoed the Free Press Act and Congress over rode the veto. He never implemented the law and several months later, he sued in tribal court, for a review of the law. To the surprise of many, the tribal court accepted the suit even though there was no defendant and the over ride should have settled the question. The case still sits in tribal court while the Osage News continues to run articles biased against Congress in every issue.

I said, "strange topic", not because the topic is strange, but because it seemed strange that the Chief would be talking on: "Free Press in Indian Country: How to set up a Tribal News Outlet in the Modern Era." Can't you just picture those young journalists avidly taking notes and not having a clue as to the soiled history of a free press in the Osage Nation? --Kugee