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April 16, 2020

Muriel Robedeaux
Executive Director
President Whiteshirt
Pawnee Business Council
Pawnee Nation of Oklahoma
881 Little D Street
Pawnee, OK 74058

Re: The responsibilities of the Pawnee Business Council and Election Commission after PBC Officers are recalled on April 11, 2020. Opinion 2020-06 Supplement

Dear Ms. Robedeaux,

On March 19, 2020, you requested my legal opinion regarding, “What are the responsibilities of the Pawnee Business Council (“PBC”) and Election Commission (“Commission”) after PBC Officers are recalled?” I responded on March 19, 2020, with Opinion Number 2020-06. I am supplementing that opinion because I understand that on April 11, 2020, President James Whiteshirt and Council member Sammye Kemble (Seat #1) were recalled by vote of the Pawnee Nation voters in accordance with Constitution Article VII, Sec. 2. There are constitutional considerations regarding the President’s recall that were not mentioned in the previous opinion.

I. QUESTION

What are the responsibilities of the PBC and Commission after the PBC President Whiteshirt and Council member Kemble are recalled?

II. ANSWER

Unlike the Constitutional silence for filling the vacancies of other PBC officers (Vice-President, Secretary, Treasurer), Constitution Art. VI, Sec. 1 provides for a succession of the President upon a vacancy in the office. When the office of the President is vacant, by operation of law, “the Vice-President shall temporarily vacate their office (Vice-President’s Office) and fulfill the office of President until another president is elected by a majority of Pawnee tribal voters in a specially called election.” The vacancy of the President’s office occurs upon the Commission certifying the recall election. *See* Election Code Section 11 (F).¹

No PBC action is need for the Vice-President to assume the office of the President upon the certification of the recall creating the vacancy. In other words, Acting Vice-President Lone Chief temporarily assumes the office of President upon the Commission’s certification of the President’s recall election.

The PBC should call a special council meeting to elect a PBC non-officer member to fill the vacancy of Temporary Vice-President (formerly held by Charles Lone Chief) caused by the recall of the President. (Const. Art.VI, Sec 1).

The Commission must call and conducted a Special Election for President and Council Seat #1 before the next regular general election. (Const. Art. VI, Secs.7, 9).

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¹ Section 11 (F) Certification of Election Results: The Election Commission will certify the election results and report all necessary tabulations. This will include, but not limited to, total amount of ballots printed, mailed absentee ballots, absentee ballots received and counted, number of spoiled/challenged ballots, total ballots issued, and total ballots counted. The certification will be presented to the office of the Pawnee Business Council President.

III. DISCUSSION

A. President Whiteshirt and Council member Kemble.

The office of President and Council member are deemed vacant² upon the Election Commission certifying³ the recall election results. For the office of President, upon recall, “a successor will be appointed pursuant to Article VI of this Constitution.” *See* Const. Art. IV, Sec. 4 (iv) (b). Constitution Art. VI, Sec. 1 provides for the Vice-President to assume the Office of President when that office is deemed vacant.

The method for temporarily filling the Office of Vice-President⁴ is that the PBC should elect a Temporary Vice-President from PBC non-officer members at a Special Council Meeting.⁵ The PBC election of a Temporary Vice-President would serve as an appointment and the installation of successor as provided by Const. Art. IV, Section 4 (iv) (b).

Recall is defined as vacancy of a PBC office (Const. Art. VI, Sec. 10 (iv)). Vacancies that occur before the last six months of a term shall be filled by a majority of voters in a specially called election; vacancies occurring in the six months prior to the general election must be voted on in a specially called election held with the general election.⁶

Therefore, the office of President was deemed vacant on April 16, 2020, when the Commission certified the recall election against President. By operation of law, the vacancy of the President’s Office was simultaneously filled by Vice-President Lone Chief. As a result of the

² Article VI-Section 4. Section 10. A position is vacant when:
(iv) Recall

³ See footnote 1.

⁴ Article VI, Sections 1-4 basically provide for filling vacancies of office of the President by the vacancy being filled by the next officer in line until a specially called election of the voters.

⁵ Article IV, Section 6 (i) & (ii)(b).

⁶ Const. Art. VI.

Section 7. If a vacancy occurs in any Business Council position in the six months prior to a general election, the specially called election shall be held with the general election.

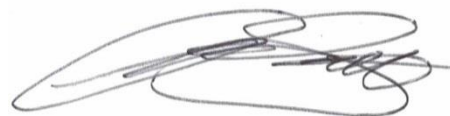
Section 9. Unless section 6 & 7 apply, the election Board shall set and conduct a special election within 60 days but not before 30 days after a position is vacant.

vacancy of the President's Office, the Vice-President's Office is vacant until the PBC holds a Special Council meeting to elect from its non-officer membership, a Temporary Vice-President. Council Seat #1, held by Council member Kemble, remains vacant until a replacement is elected by the Pawnee voters at a special election.

Since the next general election is not scheduled until the summer of 2021, the Commission has the responsibility to call a special election for the President, Vice-President, Treasurer and Council Seat #1 within 60 days, but not less than 30 days after those positions became vacant.⁷

If you have any questions, please advise me.

Yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end.

⁷ See footnote 6.