

Attorney General Opinion 2020-07
Exercise of Executive Power of the Pawnee Nation

Submitted to the Pawnee Business Council

March 26, 2020

By

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March 26, 2020

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Re: Executive Power of Pawnee Business Council Officers, Opinion 2020-07

On March 2, 2020, the Pawnee Business Council (“PBC”) requested that I provide an opinion regarding the exercise of the Pawnee Nation’s (“Nation”) executive power. On March 11, 2020, I sent an email to the PBC members asking each member to edit the framing of the questions below and asked if they had any other questions. I received comments from one PBC member but no revisions to the questions.

I. QUESTIONS

A. General Questions:

1. What are the executive powers of the PBC as body, President, Vice-President, Secretary, and Treasurer?
2. What are the fiscal approval powers of the PBC as body, President, Vice-President, Secretary, and Treasurer?
3. Who in the Pawnee Nation government is responsible for the execution of law, resolutions, and operations?

B. Specific Questions:

1. Does the President have the authority to decline to execute a contract approved by Council Resolution?
2. If the President declines to execute a contract approved by the PBC, under what circumstances, if any, may the Vice-President execute the contract?

3. Does the President have authority to decline to countersign a check for a vendor's payment on a contract approved by the PBC?

II. ANSWERS

A. General Questions

1. The general executive powers of the Pawnee Nation are constitutionally vested with the PBC and delegated to the President, Vice-President, Secretary, and Treasurer ("Offices") as enumerated in the Constitution. The executive powers of the PBC and each Office is identified below.

a. PBC

As a body, the PBC is the "supreme governing" authority and "shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by the enactment of legislation, *the transaction of business* and by otherwise speaking or acting on behalf of the Pawnee Nation of Oklahoma on all matters. . ." (Const. Art. IV, Secs. 1, and 2). (Emphasis added). The PBC has legislative power (enactment of legislation) and executive power (transaction of business). The ultimate executive power of the Pawnee Nation is held by the PBC as a body and is expressed by law and resolutions.

b. President

As stated above, the PBC is the supreme governing body of the Pawnee Nation. The President is the president of the PBC not the Pawnee Nation. (Const. Art. V, Sec. 1). The President has no constitutional or statutory executive power over the Nation; the President has constitutional power to supervise or carry out the PBC's decisions as a body. (Const. Art. V, Sec. 1)¹. The President has constitutional ministerial and administrative duties as President of the PBC (Const. Art. V, Sec. 1), and to countersign checks signed by the Treasurer. (Const. Art. V,

¹ The President shall preside at all meetings of the Pawnee Business Council, joint meetings of the Pawnee Business Council and the Nasharo Council, and all general meetings and shall vote only in the case of a tie. The President shall have general supervision of the affairs of the Pawnee Business Council and shall perform all duties pertaining to the office of the President. The President shall administer oaths and affirmations when required or permitted. The President shall be bonded.

Sec. 4 (iii)). The President may vote as a member of the PBC only in the case of a tie (Const. Art. V, Sec. 1), and may excuse PBC members from attendance for illness or other reasons. (Const. Art. VII, Sec. 1).

The President carries out the decisions of the PBC.

c. Vice-President

The Vice-President serves as voting PBC member and fills the temporary absence or vacancy of President. (Const. Art. V, Sec. 2). The Vice-President has no executive power.

d. Secretary

The Secretary has ministerial and administrative duties regarding record keeping of the PBC. (Const. Art. V, Sec. 3). The Secretary has no discretionary executive power.

e. Treasurer

The Treasurer has fiscal executive duties and powers to receive funds, disburse funds, manage funds, account for funds, and provide for an annual independent audit. (Const. Art. V, Sec. 4).

2. What are the fiscal approval powers of the PBC as body, President, Vice-President, Secretary, and Treasurer?

The PBC has the absolute fiscal approval powers of the Nation. Those powers are generally exercised with the enactment of a budget. The President has no fiscal approval powers except for the ministerial act of countersigning checks signed by the Treasurer (Const. Art V, Sec. 4 (iii)) and voting on fiscal legislative enactments if there is a tie in the PBC. (Const. Art. V, Sec. 1).

The Vice-President, Secretary and Treasurer vote on PBC fiscal legislative enactments but have no individual fiscal approval powers beyond voting as a PBC member. However, the

Treasurer has fiscal executive duties and powers to receive funds, disburse funds, manage funds, account for funds, and provide for an annual independent audit. (Const. Art. V, Sec. 4).

3. Who in the Pawnee Nation government is responsible for the execution of law, resolutions, and operations?

With the exception of the responsibilities constitutionally required of the Secretary and Treasurer, the President is constitutionally delegated to generally execute the PBC's decisions on terms and conditions prescribed by the PBC through law and resolutions. (Const. Art. V, Secs. 1-4).

B. Specific Questions:

1. Does the President have authority to decline to execute a contract approved by Council Resolution?

No. (Const. Art. IV, Sec. 1 and Art. V, Sec. 1).

2. If the President declines to execute a contract approved by the PBC, under what circumstances, if any, may the Vice-President execute the contract.

None. The Vice-president has no executive powers and may only serve in the role of President when the President is absent. The President has the constitutional duty to carry out the decisions of the PBC, including executing a contract it approved. The PBC may remove the President for neglect of duties, then the Vice-President as successor to the President, may execute the contract (Const. Art. V Sec. 1; Art. VI Sec. 1) or bring an action for an injunction and declaratory judgement before the District Court to compel the President to execute the contract.²

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² A petitioner may bring an action for a Temporary Restraining Order ("TRO") pursuant to Law Code Section 812 and Declaratory Judgement pursuant to Law Code Section 906. This Court may "enter injunction or other or other proper equitable relief. . . as justice may require." *See* Constitution Article IX, Section 6.

3. Does the President have the authority to decline to countersign a check for a vendor's payment on a contract approved by the PBC?

No, unless the President has reasonable cause to believe the Treasurer did not sign the vendor's payment check, may he decline to countersign the check. (Const. Art V. Sec. 4 (iii)).

III. DISCUSSION

An analysis of the Nation's constitutional structure and identification of three governmental powers, (executive, judicial and legislative) must be done to answer questions about the roles of the PBC and its Offices.

A. General question regarding the executive powers of the Pawnee Nation.

1. Current Structure of the Pawnee Nation government

There are two branches of the Nation's government. The first branch composed of two bodies: the PBC (Const. Art. IV) and the Nasharo Council (Const. Art. VIII). The second branch is the Judicial Branch ("Courts"). (Const. Art. IX). There is no explicit Executive Branch of government in the Constitution.³

a. Legislative Branch

The PBC is the "supreme governing body" and it "shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by the enactment of legislation." (Const. Art. IV, Sec. 1) The Nasharo Council "shall have the right to review all acts of the Pawnee Business Council regarding the Pawnee Nation of Oklahoma membership and Pawnee Nation of Oklahoma claims or rights growing out of treaties between the Pawnee Nation of Oklahoma and the United States." (Const. Art. III, Sec. 3 (i); Art. IV, Sec. 3).

³ There is no mention of an executive branch or executive duties in the 1938 Charter, ratified April 28, 1938; 1938 Constitution ratified January 6, 1938; or the 1998 Constitution revised on July 14, 1998. I do not find any published Resolutions defining executive duties or delegating those duties.

To some degree the Legislative Branch is bi-cameral. PBC members are popularly elected by the Pawnee Nation voters (Const. Art. IV, Sec. 4 (iv)), similar to U.S. House of Representatives who are elected by popular vote. Nasharo Council Members are elected to represent classes of voters- traditional bands of Pawnees similar to U.S. Senators who are elected to represent classes of voters- states.

The PBC has general legislative power and the Nasharo Council has limited review and disapproval power over PBC enactments involving membership and treaty rights. A legislative enactment disapproved by the Nasharo Council is subject to referendum of the voters.

b. Judicial Branch

The second branch is the Courts which has general jurisdiction over judicial actions. (Const. Art. IX).

2. The Nation's executive powers are vested in the PBC.

The PBC is also vested with general powers to execute its enactments- "the Pawnee Business Council shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by . . . , *the transaction of business, and . . . acting on behalf of the Pawnee Nation of Oklahoma on all matters.*" (Const. Art. IV, Sec. 2.).

3. Constitutional Enumerated Powers of Offices.

The PBC consists of eight (8) members (Const. Art. IV, Sec. 1). The President, Vice-President, Treasurer and Secretary are elected to their positions by the Pawnee Nation voters. (Const. Art. IV, Section 4(iv)).⁴ This is a change from the 1938 Constitution which provided

⁴ Article IV Section 4(iv) At the first regular election after the adoption of this Constitution (1998), the President, Treasurer, and the First and Second Council Members shall be elected to a four year term and the Vice-President, Secretary, and Third and Fourth Council Members shall be elected to a two-year term in order to stagger the terms of office:

(a) Candidates shall declare the position they are seeking.

that the officers were “selected from among their own membership - a President, Vice-President and Secretary-Treasurer who shall serve at the will of the respective councils.”⁵

The President, Vice-President, Treasurer and Secretary are offices of the PBC and do not constitute a separate executive branch of government as affirmed by the constitutional procedure for filling temporary vacancies of the offices from PBC members. (Const. Art. VI, Secs. 1-4).

The constitutional powers of the offices are listed below.

a. President

There are thirty-nine (39) references in the Constitution to the President and no references to executive power.

The President may call special meetings of PBC. The President shall preside at PBC meetings and joint meetings of the PBC and Nasharo Council administer oaths and affirmations.

“The President shall have general supervision of the affairs of the Pawnee Business Council and shall perform all duties pertaining to the office of the President.” (Const. Art. V, Sec. 1).

The President shall countersign all checks signed by the Treasurer. (Const. Art. V, Sec. 4 (iii)).⁶

The “Pawnee Business Council President” may also excuse PBC members from attendance for sickness or other reasons.” (Const. Art. VII, Sec 1).

b. Vice President

“In the absence of the President, the Vice-President shall perform the duties of that office.

In the case of vacancy, the Vice-President shall succeed at once to the office of the President.”

⁵ 1938 Constitution Article IV, SEC. 4. (e) That members of the Pawnee Business Council elected pursuant to the provisions of this section shall be installed immediately after their election and the respective councils shall then organize for business by selecting from among their own membership a President, Vice-President and Secretary-Treasurer who shall serve at the will of the respective councils.

⁶ The following are dictionary definitions of “countersign”:

“a signature attesting the authenticity of a document already signed by another”, <https://www.merriam-webster.com/dictionary/countersign>;

“The inscription of one’s name at the end of a writing, done by a secretary or a subordinate, to attest to the fact that such a writing has been signed by a principal or a superior, thereby vouching for the genuineness of the signature. To write one’s name at the end of a document—in addition to the inscription of a name by another - to attest to the authenticity of the signature” <https://legal-dictionary.thefreedictionary.com/countersign>

(Const. Art. V, Sec. 2). The Vice-President has no other prescribed duties other than being a PBC member.

c. Secretary

The Secretary has ministerial duties for recording PBC and Nasharo Council meetings, preparing PBC agendas, maintaining PBC records and files, maintaining a membership roll, attesting to PBC enactments and performing the duties of the Treasurer, in the absence of the Treasurer. (Const. Art. V, Sec. 3).

d. Treasurer

The Treasurer has financial management duties to receive funds, maintain financial records, deposit funds, disburse funds, provide an annual independent audit, and present financial reports. The Treasurer performs the duties of Secretary, in the absence of Secretary. (Const. Art. V, Sec. 3).

4. The historical frame of reference for the Pawnee Nation Constitution

The Pawnee Nation Constitutions of 1938 and 1998 were adopted pursuant to the Oklahoma Indian Welfare Act of June 26, 1936 (“OIWA”) 25 U.S.C. § 5201.ⁱ In essence, the OIWA applied the Indian Reorganization Act of 1934 Wheeler–Howard Act, (June 18, 1934), (“IRA”) 25 U.S.C § 462 et seq. to Oklahoma tribes.ⁱⁱ

In the 1930’s, the IRA and OIWA were efforts to end the federal allotment policy. One of the principal advocates for the change of policy and one of the most influential proponents of tribal constitutions was Felix Cohen, Assistant Solicitor for U.S. Department of Interior. Cohen believed the change from the federal allotment policy to more tribal self-governance would be successful and acceptable to the general public if tribal constitutional governments “were to be like town governments,ⁱⁱⁱ except that they would have federal protection and their special rights.”

See "On the Drafting of Tribal Constitutions" by Felix Cohen," O.U. Press, 2006, ("Tribal Constitutions") at p. xxii.

Cohen wrote:

The simplest form of representative government is unified government, that is to say, government by a single body of representatives clothed with comprehensive powers. These representatives may choose special officials or committees for tasks which cannot be efficiently carried out by the governing body as a whole.

...

In every case the central governing body of the community will supervise all the special tasks that must be done by special officials, will require regular reports from those officials, and will have the power to remove those officials if they neglect their duties or fail to carry out the policies approved by the governing body. While the governing body is not in session, it may delegate the task of general supervision over governmental activities to its chairman or president or to an executive council or committee. Such officers would of course be responsible to the governing body and would be bound by the laws and resolutions of that body. The simple principle underlying the system of unified government is that all powers of government are vested in a single governing body, which may delegate to subordinate officials such powers as it thinks proper. (Tribal Constitutions at p. 28)

Contrary to the federal model of co-equal and separate executive, legislative and judicial branches adopted by most states, Cohen and the BIA advocated for a single branch of government. Cohen wrote:

The same difficulties attending a two-chambered legislature are likely to arise if powers of government are divided up among separate coordinate "departments," for example, an executive, legislative, and judicial department. Under such a "separation of powers" there is bound to be friction, delay, and uncertain responsibility. This is especially likely to be the case if the executive and the judicial departments are given the power to veto laws which they regard as unconstitutional or unwise. Such a system of government makes change very difficult. The executive and judicial departments can stop the car, but they cannot make it go.

For these reasons it is recommended that an Indian tribe, if it desires to establish an independently elected president or governor, should not give this officer the power to veto laws, but should require him to carry out the laws passed by the council in such manner as the council may direct. (Tribal Constitutions at p. 32.)

It is against this historical backdrop that the Pawnee 1938 Constitution was adopted. The 1938 Pawnee Constitution rejected the three-branch model and followed the “single branch” model.

Officer’s roles, duties and responsibilities provided in the 1938 Constitution were continued in the 1998 Constitution. However, the 1998 Constitution added a judicial branch and changed the election of Officers from by the PBC members to the voters.

The 1938 and 1998 Constitutions adhered to Cohen’s admonitions, that the “central governing body of the community will supervise all the special tasks that must be done by special officials, will require regular reports from those officials, and will have the power to remove those officials if they neglect their duties or fail to carry out the policies approved by the governing body.”

The 1998 Constitution also followed Cohen’s recommendation that “if a tribe desires to establish an independently elected president or governor, (it) should not give this officer the power to vote laws, but should require him to carry out the laws passed by the council in such manner as the council may direct.” The 1998 Constitution provided for an independently elected president but did not give the President power to vote laws (except if a PBC vote is tied), or to veto them.

Supported by the historical context provided by Cohen, the PBC has the authority to require the President to carry out the laws passed by the council in such manner as the PBC may direct.⁷

⁷ Again, courts may consult explanatory documents to gain a better feel for context or to shed light on particular language (of a law). Reference to legislative history for background is commonplace. A “proper construction frequently requires consideration of [a statute’s] wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve.” Congressional Research Service - Statutory Interpretation: General Principles and Recent Trends, Sept. 24, 2014 at pg. 48.

5. Exercise of executive power identified in the 1998 Constitution

The PBC can only express itself by legislative enactments which include laws and resolutions. By necessity, someone must be responsible for carrying out, implementing and managing the policy expressed and decisions made by the legislative body.

For a government and an organization to function, the role, duties and responsibilities of who establishes policy (legislative), who interprets the policy in conflict (judicial), and who implements the policy (executive) must be clear. The Constitution is clear that the PBC as body establishes policy by enactment of laws and resolutions with review and disapproval authority by the Nasharo Council involving membership and treaty rights. The Constitution is clear that the Court interprets the Constitution, laws and resolutions.

The Constitution's language is not as clear as to how the laws and resolutions are implemented.

Most of the enumerated powers of the President are ministerial administrative duties^{iv} pertaining to PBC functioning as legislative body – call special meetings of PBC (Const. Art. IV, Sec 6), preside at PBC meetings and joint meetings of the PBC and Nasharo Council (Const. Art. V, Sec. 1), administer oaths and affirmations. (Const. Art. V, Sec. 1), and excuse PBC members from attendance for illness or other reasons. (Const. Art. VII, Sec 1).

There are no constitutional provisions for the President independent of the PBC to manage or conduct the operations of the government or to veto legislative enactments.

The lack of clarity for exercising executive power springs from the silence of the role, duties and responsibilities of the “office of the President” (Const. Art. V, Sec. 1). The Constitution provides, that “The President shall have general supervision of the affairs of the Pawnee Business Council (the supreme governing body) (Const. Art. V, Sec. 1); it should be underscored that the President has supervision over *the affairs* of the PBC not the PBC as body.

The definition of supervision includes to “exercise the charge and oversight,” “oversee the work of others,” “have responsibility for ensuring that it is carried out properly,” “administer the affairs of something or someone,” and “be in charge of an activity”⁸

The “affairs” of the PBC is to exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by the enactment of legislation, *the transaction of business*, and by otherwise speaking or acting on behalf of the Pawnee Nation of Oklahoma on all matters” (Const. Art. IV, Sec. 2) (Emphasis added). The PBC attends its affairs by decisions - legislative and transactional.

The PBC makes decisions. As the supervisor of the PBC’s affairs, the President shall exercise the charge and have the responsibility for ensuring that PBC’s decisions are carried out properly. In other words, the President’s work is to carry out the PBC’s decisions. Only the President has the authority to supervise and execute the PBC’s decisions; how, when, and under what terms the President does so is prescribed by PBC because it is the “supreme governing body”.

One of the greatest means by which the PBC prescribes the President’s supervision or execution of its decisions is a budget. A budget relies on a narrative of the need for and use of funds, identifies and authorizes the work, business or program in need of funds, and then allocates the funding for the President to supervise, execute or manage.

⁸ The following are dictionary definitions of “superintend”:
“to have or exercise the charge and oversight of”, <https://www.merriam-webster.com/dictionary/superintend>;
“If you superintend something, you have responsibility for ensuring that it is carried out properly”, <https://www.collinsdictionary.com/us/dictionary/english/superintend>;
“1. To oversee the work of others; to supervise.”
“2 To administer the affairs of something or someone.” <https://www.yourdictionary.com/superintend>;
“to be in charge of an activity or job and to check that it is done correctly”, <https://www.macmillandictionary.com/us/dictionary/american/superintend>;
to be in charge of something: <https://dictionary.cambridge.org/us/dictionary/english/superintend>

Another perspective is that the President is the agent of the PBC to carry out its decisions. The PBC may enlarge and define the President's work but the PBC has no authority to execute its decisions except through the President. In other words, the PBC may not execute or carry out its decisions directly. I find no Pawnee law or resolutions prescribing any delegation or additional authority of the President or any other person such as an Executive Director.

David Tippeconic, the former Chief Executive Officer ("CEO") for CITCO, an international petroleum company, explained that in a corporate model, the employees work for the CEO and the CEO works for the Board. The same concept applies to the Pawnee government; the employees work for the President and the President works for the PBC.

For example, if the PBC wanted to hire a Human Resources Assistant, the PBC would authorize the hire by budgeting the position, then the President would proceed to hire the Assistant in conformance with personnel policies approved by the PBC or by the President if the PBC delegated to the President the authority to develop personnel policies. The PBC could not perform the recruiting, screening or hiring process. The PBC could retain the final approval of the hire if the position was in a policy making role such as an Executive Director.

In summary, the Constitution vests the executive power of the Pawnee Nation in the PBC, but it can be only exercised by President, Secretary and Treasurer. The PBC makes decisions for the Nation expressed by legislative enactments of law and resolution. It is the role, duty, and responsibility of the President to carry out those decisions with exception of the duties of the Secretary and Treasurer, the Secretary to manage the record keeping for the PBC, and the Treasurer to manage the financial affairs of the Nation for which the PBC is ultimately accountable.

It is not the role of the PBC to carry out its own decisions, i.e. to enforce its own laws or to carry out its own resolutions.

B. Specific Questions and Answers

1. Does the President have authority to decline to execute a contract approved by Council Resolution?

No, the President has no veto power over PBC legislative enactments either by declaration or inaction. It is the President's duty to carry out the legislative and business decisions of the PBC. (Const. Art. V, Sec. 1).

2. If the President declines to execute a contract approved by the PBC, under what circumstances, if any, may the Vice-President execute the contract.

None. The President has a constitutional duty to carry out or execute the decisions of the PBC including "business transactions" of entering into a contract. The Vice-President has no authority to exercise the duties of the President unless the Office is absent or vacant. The President may delegate duties to the Vice-President in his absence. The remedy if the President declines or refuses to execute a contract approved by PBC legislative action is to remove the President for "Willful neglect or refusal to fulfill statutory (constitutional) duties." (Const. Art. VII, Sec. 4 (iv) (b)). Once the President is removed from office, then the Vice-President succeeds to the Office of President and may execute the subject contract. Or the PBC could bring an action for an injunction and declaratory judgement before the District Court to compel the President to execute the contract.⁹

3. Does the President have the authority to decline to countersign a check for a vendor's payment on a contract approved by the PBC?

No, unless the President has reasonable cause to believe the Treasurer did not sign the vendor's payment check, the President has no authority to decline to countersign the check. The

⁹ See footnote 2.

President has no veto power over the PBC's legislative actions by declaration or action. The President has a constitution duty to countersign all checks signed by the Treasurer. (Const. Art. V, Sec. 4 (iii)). A counter signature is a signature attesting to the authenticity of a document already signed by another.¹⁰ The purpose of the President countersigning the Treasurer's signature is only for the purpose of verifying that the signature on the check is the Treasurer's signature. The President has no authority to decline to countersign a check for any other reason.

The remedy if the President declines or refuses to counter sign a check for a vendor's contract approved by PBC legislative action is to remove the President for "Willful neglect or refusal to fulfill statutory (constitutional) duties." (Const. Art. VII, Sec. 4 (iv) (b)). Once the President is removed from office, then the Vice-President succeeds to the Office of President and may countersign the vendor's check. Or the PBC could bring an action for an injunction and declaratory judgement before the District Court to compel the President to execute the contract.¹¹

IV. CONCLUSION

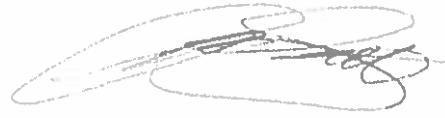
The executive power of the Nation is vested in the PBC as the supreme governing body. The Constitution provides that the President generally supervises the affairs of the PBC; therefore, the President's role is to carry out the decisions of the PBC expressed in law and resolutions.

If you have any questions, please advise me.

Yours,

¹⁰ The following are dictionary definitions of "countersign"; "a signature attesting the authenticity of a document already signed by another", <https://www.merriam-webster.com/dictionary/countersign>; "The inscription of one's name at the end of a writing, done by a secretary or a subordinate, to attest to the fact that such a writing has been signed by a principal or a superior, thereby vouching for the genuineness of the signature. To write one's name at the end of a document—in addition to the inscription of a name by another—to attest to the authenticity of the signature", <https://legal-dictionary.thefreedictionary.com/countersign>.

¹¹ See footnote 2.



ENDNOTES

ⁱ 25 §5203.

Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund.

Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: *Provided, however,* That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 5101 et seq.]: *Provided,* That the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter. (June 26, 1936, ch. 831, §3, 49 Stat. 1967.)

ⁱⁱ Chapter 576 June 18, 1934. | [S. 3645.] 48 Stat., 984.
SEC. 13.

The provisions of this Act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16, shall apply to the Territory of Alaska: *Provided,* That Sections 2, 4, 7, 16, 17, and 18 of this Act shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act shall not apply to the Indians of the Klamath Reservation in Oregon.

SEC. 16.

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

SEC. 17.

The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided,* That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate

business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

SEC. 18.

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

ⁱⁱⁱ The 1938 Constitution seems to reflect the Council-Manager model of government and the 1998 Constitution seems to reflect a weak mayor model. *See* Exhibit "A", Redline Comparison of 1938 and 1998 Constitutions.

Forms of "City" Government

Council-Manager

This is the most common form of local government. The City council oversees local policy and budgets and appoints a professional city manager to handle administrative tasks on a day-to-day basis. City managers are normally non-partisan, politically neutral full-time workers who carry out the decisions of the mayor or council.ⁱⁱⁱ City managers basically serve as the CEO of the "city" and is involved in the council's decisions as the group's advisor.

Council-manager governments elect council members who are responsible for policy making. It will elect one of its own members to be a chairperson and appoint a city manager to oversee the city's daily operations and make appointments and critical managerial decisions. The benefit of this form of government is that the day-to-day operations are largely insulated from politics. In 2006, 55% of city governments were identified as council-manager governments.

In the Council-Manager government, the elected council functions as the tribe's legislative body adopting laws and ordinances as permitted by the tribal constitution. The city manager then implements the tribe's legislative body's decisions, regardless of the city manager's agreement with those decisions.

One of the benefits of this system is that it encourages open communication between the citizens and their government. It encourages community "input into political processes and diffuses the power of special interests, and eliminates partisan politics from hiring, firing, and contracting decisions." This system is currently used by Oklahoma City, OK.

Mayor-Council

This form of government is broken down to Strong Mayor and Weak Mayor governments.

Strong Mayor-council governments have an elected council, but the elected mayor provides executive leadership rather than an appointed city manager. "The mayor often appoints a city administrator or managing director to oversee daily operations. Since this administrator or director is selected by the mayor, their tenure is prone to align with the mayoral cycle. This is in contrast to the council-manager structure, where the city manager appointment is not necessarily tightly aligned with any political cycle."ⁱⁱⁱ

Functionally speaking, a chief administrator or managing director in a mayor-council form of government may sound the same as a city manager in a council-manager form of government, but this is not the case. In the former, the appointee reports to the popularly elected mayor. In the latter, the city manager reports to the council more broadly. In the mayor-council form of government a mayor can make managerial changes swiftly, so the chief administrator is incentivized to perform well in the eyes of the mayor. Alternatively, council-manager governments are designed to encourage city managers to perform to the liking of a larger group of elected officials with diverse priorities – the council. The implication being that city managers are often more stably positioned to execute their work.ⁱⁱⁱ

The strong mayor form of government is most often followed in larger U.S. cities where the mayor must be a political player on the state and national level. Strong mayor cities vary in the amount of power the mayor has verses the council's power, "but in general, the strong mayor form resembles the US federal government in how the President and Congress interact." Under the strong mayor government, the day-to-day management of community operations is directed by the mayor who usually lacks the education and experience to oversee the daily delivery of

community services and decisions are often made bases on an applicant's political affiliation rather than his/her professional qualifications.

The city council serves as the legislative body. The mayor's interaction with the council is determined by local laws. In some cities, the mayor presides over the council and in other cities the mayor has nothing to do with official council actions. Some cities give the mayor the veto power over council decisions.

In a weak mayor system, the mayor cannot hire or fire without council's approval, and sometimes cannot hire. And the mayor does not vote on matters of the city. The role of the mayor in weak mayor systems is more of a ceremonial role and found in smaller towns and cities with less complex issues to deal with (and with little or no full-time employees).

Commission form of Government

This form features a small council whose members are the legislative body who also act as individual department heads. The theory in forming this type of government was that combining the executive and legislative functions "would result in increased political accountability and a more efficient and responsive city government."

^{iv} "Ministerial duty refers to the official duty of a public officer wherein the officer has no room for the exercise of discretion, and the performance being required by direct and positive command of the law."
<https://definitions.uslegal.com/m/ministerial-duty/>

EXHIBIT "A"

Comparison of the 1938 and 1998 Pawnee Nation Constitutions by redline.

The 1938 Constitution is the base document edited for changes by provisions the 1998 Constitution

The strike-through language (----) shows what was deleted from the 1938 Constitution by the 1998 Constitution and the underlined (_____)language shows what was added to the 1938 Constitution by the 1998 Constitution.

CONSTITUTION AND BY-LAWS OF THE PAWNEE INDIANS OF OKLAHOMA

RATIFIED JANUARY 6, 1938

PREAMBLE

We, the members of the four confederated binds of Indians, namely, Chaui, Kitkehahke, Petahauerat and Skedee, which now constitute the Pawnee Indians of Oklahoma, with faith in the purposes of our Supreme Being, with abounding pride in our racial heritages and with the determination to promote through marshalled efforts our social, economic and political advancement, do solemnly ordain and establish this ~~organization-Pawnee Nation of Oklahoma~~ and adopt this ~~cConstitution and By-laws-~~ pursuant to the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) which shall supersede the constitution approved by the Secretary of the Interior on November 26, 1937, and ratified on January 6, 1938, as amended.-

ARTICLE I- NAME

The name of this organization shall be the "Pawnee Indian Tribe of Oklahoma."

ARTICLE II --PURPOSE

~~-----The purposes of this organization shall be:~~

~~(a) To define, establish and safeguard the rights, powers and privileges of the Tribe and its members;~~

~~(b) To secure for the Tribe and its members the rights, powers, privileges and benefits available under the provisions of the Oklahoma Indian Welfare Act;~~

~~(c) To promote in other ways the common welfare of the Tribe and its membership.~~

Section 1. To secure for the Pawnee Nation of Oklahoma and its members rights, powers, privileges and benefits of a sovereign nation.

Section 2. To establish its Jurisdiction and Powers.

(i) The governmental powers of the Pawnee Business Council, acting for the sovereign Pawnee Nation of Oklahoma shall extend to all persons and to all real and personal property including lands and other natural resources, and to all waters and air space, within the Indian Country over which the Pawnee Nation of Oklahoma has jurisdiction. The governmental powers of the Pawnee Nation of Oklahoma shall also extend outside the exterior boundaries of Indian Country to any persons or properties which are, or may be included within the jurisdiction of the Pawnee Nation of Oklahoma.

(ii) The Pawnee Nation of Oklahoma is empowered to maintain under any laws of the U.S. and/or Pawnee Nation of Oklahoma's law and order, and judicial systems to protect the peace, safety, health, and welfare of the members of the Pawnee Nation of Oklahoma, provided the concepts of separation of powers is maintained.

(iii) The Constitution is the supreme law of the Pawnee Nation of Oklahoma and all persons subject to its jurisdiction. The Pawnee Business Council shall exercise its power

consistent with the provisions of this Constitution and the Corporate Charter of the Pawnee Nation of Oklahoma.

ARTICLE III-MEMBERSHIP OF TRIBE

SECTION 1. The current membership of the Pawnee Indian Tribe of Oklahoma shall consist of the ~~following~~ persons:

- (a) All persons enrolled or entitled to be enrolled on the official annuity (base) roll of the Tribe as of February 19, 1937;
- (b) All children born since the date of said roll of a lawful marriage, both of whose parents are members of the Tribe;
- (c) All children of one-quarter (1/4) or more Pawnee Indian blood born on or after February 9, 1938, of a lawful marriage of an enrolled member.

SECTION 2. The future membership of the Pawnee Nation of Oklahoma, after the adoption of this Constitution, shall include any individual who applies for membership and possesses at least one-eighth (1/8) degree Pawnee Indian Blood, as amended on January 4, 2003 on Amendment Number 1.

SECTION 23. The Pawnee Business Council shall have power to prescribe rules and regulations covering future membership of the Tribe, including the adoption and loss of membership, provided:

- ~~(a) That such rules and regulations shall be subject to the approval of the Secretary of the Interior;~~
- ~~(b) That such rules and regulations shall be subject to the approval of the Nasharo Council;~~
- ~~(c) That, after one year from the adoption of this Constitution, no person shall be admitted to membership who is of less than one fourth degree Pawnee Indian blood.~~
 - (ii) A person shall not be eligible for membership, if enrolled as a member of another Indian Tribe.

ARTICLE IV - PAWNEE BUSINESS COUNCIL

SECTION 1. The supreme governing body of the Tribe shall be the Pawnee Business Council, which shall consist of eight (8) members:

~~**SECTION 2.** The Pawnee Business Council shall have power to appoint subordinate officers, committees and representatives, Subject to the limitations imposed by this Constitution and applicable Federal law, the Pawnee Business Council shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by the enactment of legislation, to the transaction of business, and otherwise speak or act on behalf of the Tribe in all matters on which the Tribe is empowered to act, provided and by otherwise speaking or acting on behalf of the Pawnee Nation of Oklahoma on all matters which the Pawnee Nation of Oklahoma is empowered to act, including the authority to hire legal counsel to represent the Pawnee Nation of Oklahoma.~~

~~(a) That the powers of the Tribe shall be set forth in detail in a Federal Charter to be requested by the Pawnee Business Council;~~

~~(b) SECTION 3. That acts of the Pawnee Business Council shall be subject to review of the Nasharo Council in accordance with Section 2 of Article V of this Constitution~~All acts regarding

Membership or Claims or Treaty Rights of the Pawnee Business Council shall be subject to review by the Nasharo Council in accordance with this Constitution.

SECTION 34. ~~The present Pawnee Business Council shall serve till the next regular election provided for in Section 4 of this Article, or until their successors are elected and installed, provided:~~

~~(i) The Pawnee Business Council shall provide an election commission to conduct all elections, provided that regular elections are held on the first Saturday in May of each odd numbered year.~~

~~(a) That within thirty days after the adoption of this Constitution, the said Council shall organize for business by selecting from among its own membership a President, Vice-President, and a Secretary-Treasurer, who shall serve in these respective offices at the will of this Council~~

~~SECTION 4. Regular elections of members of the Pawnee Business Council shall be held on the first Saturday in May, 1939, and on the first Saturday in May of each second year thereafter, provided:~~

~~(a) That such elections shall be held under rules and regulations prescribed by the Pawnee Business Council,~~

~~(iib) That all members of the Pawnee Indian Tribe, twenty one years of age and older, shall be eligible to vote in these elections. No member of the Pawnee Nation of Oklahoma, eighteen (18) years of age or older, shall be denied the right to vote by secret ballot, either in person or by absentee ballot, provided that no write-in votes shall be allowed;~~

~~(iii)(e) That any person, in order to be eligible for election to membership on the Pawnee Business Council, must be a male member of the Pawnee Indian Tribe, twenty five years of age or older, and a resident of the territory known as the original Pawnee Indian Reservation in Oklahoma; Members of the Pawnee Nation of Oklahoma, twenty-five (25) years of age or~~

~~older, shall be eligible for election to the Pawnee Business Council. Members of the Pawnee Nation convicted of a felony or dishonorably discharged from the Armed Forces of the United States of America are ineligible for candidacy.~~

~~(d) That a member of the Nasharo Council shall not be eligible for election to the Pawnee Business Council,~~

~~(e) That members of the Pawnee Business Council elected pursuant to the provisions of this section shall be installed immediately after their election and the respective councils shall then organize for business by selecting from among their own membership a President, Vice-President and Secretary-Treasurer who shall serve at the will of the respective councils~~

~~(iii) Members of the Pawnee Nation of Oklahoma, twenty-five (25) years of age or older, shall be eligible for election to the Pawnee Business Council. Members of the Pawnee Nation convicted of a felony or dishonorably discharged from the Armed Forces of the United States of America are ineligible for candidacy.~~

~~(iv) At the first regular election after the adoption of this Constitution (1999), the President, Treasurer, and the First and Second Council Members shall be elected to a four~~

year term and the Vice-President, Secretary, and Third and Fourth Council Members shall be elected to a two-year term in order to stagger the terms of office:

(a) Candidates shall declare the position they are seeking.

(b) If there are positions which are vacant due to lack of candidates, those positions shall be considered vacant and filled according to Article VI.

Thereafter, all members of the Pawnee Business Council shall be elected to a four-year term of office and shall serve until their successors shall be duly installed in office. In cases when a vacancy is being filled to complete an unexpired term due to death, resignation, forfeiture, or recall of a Pawnee Business Council member, a successor will be appointed pursuant to Article VI of this Constitution.

(v) A Nasharo Council member shall resign his/her position if elected or appointed to the Pawnee Business Council.

(vi) A Pawnee Nation of Oklahoma employee shall resign his/her position if elected or appointed to the Pawnee Business Council.

(vii) A Pawnee Business Council member shall not be eligible for employment by the Pawnee Nation of Oklahoma.

(viii) Elected members of the Pawnee Business Council shall be inaugurated and sworn into office fourteen (14) calendar days after the Election Day.

(ix) Pawnee Business Council records and all related documentation for each outgoing Pawnee Business Council member shall be made available to the newly elected Pawnee Business Council members. Failure to comply shall result in ineligibility to file for candidacy for the Pawnee Business Council for ten (10) years or until records and documents are returned.

SECTION 5. All acts of the Pawnee Business Council shall be determined by a majority vote of the membership present, provided that five (5) members of the Council shall constitute a quorum to transact business. In the event of a tie, the chairperson or chairperson pro tem shall cast the deciding vote.

SECTION 6. Regular meetings of the Pawnee Business Council shall be held on the first Saturday in February, May, August, and November of each year, provided:

~~(ia) That Special meetings may be called by the President, at his discretion and shall be called by him upon the written request of five members of the Pawnee Business Council~~

(ii) Special meetings shall be called by the President within two (2) weeks after receiving a written request, by regular mail or by certified and return receipt mail, from a majority of the occupied Pawnee Business Council positions, provided:

(a) If the President fails to call and conduct a special meeting as requested within two (2) weeks, a majority of the occupied members of the Pawnee Business Council shall be authorized to call and conduct a special meeting by affixing their signatures to a document listing in detail the need for the meeting and citing this Section of the Constitution as their authority to meet.

(b) A minimum of two (2) days notice of all meetings, regular or special, shall be published in a newspaper and posted in public view. Provided, that in an emergency, posting in public view for two (2) days shall be deemed sufficient notice. Notice shall include the agenda.

SECTION 7. Vacancies in the membership of the Pawnee Business Council shall be filled for an unexpired term through appointment by the President, subject to the approval of the

CouncilSection 7. All members of the Pawnee Business Council shall attend tribal constitution orientation classes as prescribed by the Pawnee Business Council.

ARTICLE V-DUTIES OF OFFICERS

SECTION 1. The President shall preside at all meetings of the Pawnee Business Council, joint meetings of the Pawnee Business Council and the Nasharo Council, and all general meetings and shall vote only in the case of a tie. The President shall have general supervision of the affairs of the Pawnee Business Council and shall perform all duties pertaining to the office of the President. The President shall administer oaths and affirmations when required or permitted. The President shall be bonded.

SECTION 2. In the absence of the President, the Vice-President shall perform the duties of that office. In the case of vacancy, the Vice-President shall succeed at once to the office of the President. The Vice-President shall be bonded.

SECTION 3. The Secretary shall, be responsible for the following duties:

- (i) Record the proceedings of all meetings of the Pawnee Business Council and Nasharo Council, and all special meetings as assigned by the Pawnee Business Council.
- (ii) Prepare the agenda for meetings of the Pawnee Business Council.
- (iii) Maintain all records and files of the Pawnee Business Council. All records and files of the Pawnee Business Council, except such records as shall be explicitly made exempt by law, shall be public information to any member of the Pawnee Nation of Oklahoma.
- (iv) Maintain the Pawnee Nation of Oklahoma official membership roll.
- (v) Attest to enactments of the Pawnee Business Council.
- (vi) In absence of the President and Vice-President, call to order regular and special meetings of the Pawnee Business Council until a Chairman pro tem is selected.
- (vii) Perform the duties of the Treasurer, in the absence of the Treasurer.
- (viii) The Secretary shall be bonded.

SECTION 4. The Treasurer shall, be responsible for the following duties:

- (i) Receive funds from all sources for which the Pawnee Business Council is held accountable, and maintain financial records which shall reflect actual receipts and disbursements of all funds and which shall reflect the financial position of the Pawnee Nation of Oklahoma.
- (ii) Deposit funds from any and all sources for which the Pawnee Business Council is held accountable in an insured bank or other approved financial institution.
- (iii) Disburse by check, the funds from any and all funds for which the Pawnee Business Council. All checks shall be signed by the Treasurer and countersigned by the President.
- (iv) An annual independent audit of all funds for which the Pawnee Business Council is held accountable.
- (v) Present financial status reports and budget reports as determined by the Pawnee Business Council.
- (vi) Perform the duties of Secretary, in the absence of Secretary.
- (vii) The Treasurer shall be bonded.

ARTICLE VI-VACANCIES

SECTION 1. In the event of Presidential vacancy, the Vice-President shall temporarily vacate their office and fulfill the duties of the office of President until another president is elected by a majority of Pawnee tribal voters in a specially called election. The Business Council shall elect from the current council membership a Temporary Vice President to serve until the next President is elected by a majority of Pawnee tribal voters in a specially called election, at which time the Temporary Vice President shall return to his/her previous position.

SECTION 2. If the offices of President and Vice President are vacant the Treasurer shall temporarily vacate their office and fulfill the duties of President and the secretary shall temporarily vacate their office and fulfill the duties of Vice President. The Business Council shall elect from the current council membership a Temporary Treasurer and a Temporary Secretary until the next President and Vice President are elected by a majority of Pawnee tribal voters in a specially called election, at which time the Temporary Treasurer and Temporary Secretary shall return to their previous position.

SECTION 3. If the offices of President, Vice President, and Treasurer are vacant the Secretary shall temporarily vacate their office and fulfill the duties of the President. The Business Council shall elect from the current council membership a Temporary Vice President, Temporary Treasurer, and Temporary Secretary until the next President, Vice President, and Treasurer are elected by a majority of Pawnee tribal voters in a specially called election, at which time the Temporary Vice President, Temporary Treasurer and Temporary Secretary shall return to their previous position.

SECTION 4. Notwithstanding Article 4 Section 5, if four or more positions are vacant a quorum shall consist of all of the remaining members. If all officer positions are vacant any remaining council members may call a special Business Council meeting, at which that council member shall chair and the council shall elect officers.

SECTION 5. If a vacancy occurs in a First, Second, Third, or Fourth Business Council member position before the last six months of a term, it shall be filled by a majority of Pawnee member voters in a specially called election.

SECTION 6. If a vacancy occurs in a First, Second, Third, or Fourth Business Council member position in the latter six month of that term, that position shall remain vacant until the next general election.

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 8. Any successful candidate who is elected in a special election shall serve only the remaining term of that vacant position.

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.

SECTION 10. A position is vacant when:

- (i) Subject to an effective date, a resignation is received in writing by the Office of the president
- (ii) Vacant pursuant to Article VII, Section One
- (iii) Death
- (iv) Recall
- (v) Removal
- (vi) A suspension is imposed under Section 3, in which case a specially called election is not required if the Business Council finds that suspension is likely to be resolved within

six months. If the Business Council finds that the suspension is likely to be longer than six months, they may call a special election. If the suspension is removed, the person elected in the special election shall step down and the suspended Business Council Member shall retake their position.

ARTICLE VII-FORFEITURE, RECALL, REMOVAL

SECTION 1. Forfeiture - If a member of the Pawnee Business Council fails or refuses to attend two (2) regular or special meetings per year from the date of oath of office, unless excused by the Pawnee Business Council President for illness or other causes for which the member cannot be held responsible, his/her office shall be declared forfeited by a resolution of the Pawnee Business Council and the vacancy shall be filled.

SECTION 2. Recall - Upon receipt of a petition signed by twenty five per cent (25%) of the number of voters who voted in the last regular election call for the recall of any member of the Pawnee Business Council, it shall be the duty of the election commission to call and conduct within thirty (30) days an election on such recall. Recall shall be effective only if a majority of those voting shall vote in favor of such recall and that at least 50 per cent (50%) + one (1) of the number voting in the previous election vote in the recall election. Once a member has faced a recall attempt, no further recall action shall be brought against that member until at least twelve (12) months have passed. No member of the Pawnee Business Council shall be subject to recall action within the first six (6) months of that member's term.

SECTION 3. Suspension:

(i) A Pawnee Business Council member shall be suspended from the Business Council without compensation when:

(a) charged with a criminal offense, and

(b) that offense would be cause for removal as defined in Section 4.iv.(a), and

(c) the charging jurisdiction guarantees similar civil rights and due process as is guaranteed within the Pawnee Nation.

(ii) The suspension shall be effective from the date of the filing of the charges until dismissed.

(iii) It is the duty of the defendant Business Council Member to timely notify the Business Council and the Attorney General of the charges.

(iv) A suspended Business Council Member is excused from attending meetings and other official duty during the suspension.

(v) Any vote cast or other official action taken after such charges have been filed shall be valid, but taking such official action while under suspension shall constitute the crime of unofficial misconduct.

(vi) The Business Council may by majority vote, with the subject member abstaining, lift the suspension if it finds that the requirements of paragraph (i) are not met.

(vii) The suspended Business Council Member may bring a declaratory judgment action in Pawnee Nation Tribal Court to challenge the application of this Section.

(viii) If the charges are dismissed because the defendant is found innocent, the suspension is automatically removed and all withheld compensation shall be paid without interest.

Section 4 Removal of Pawnee Business Council Members

(i) Removal for Cause - Pawnee Business Council members may be removed for cause by petition filed in Pawnee Nation District Court with right of appeal to the Pawnee Nation Supreme Court.

(ii) A petition may be filed only:

(a) by the Attorney General, or

(b) by Resolution of the Pawnee Business Council, or

(c) by any individual or individuals who deposits \$10,000 in cash or bond with the court clerk.

(iii) Conviction is defined as a final conviction or a plea of no contest or guilty, whether or not dismissed, pardoned or expunged, and irrespective of whether it is denominated a felony, misdemeanor, or otherwise.

(iv) Cause is defined as:

(a) conviction of any of the following offenses in any legitimate governmental jurisdiction:

A. Fraud

1. Making false representation

2. Knowledge of such false representation by the perpetrator

3. Reliance on the false representation by the person defrauded

4. An intent to defraud

5. The actual act of committing fraud

6. Passing bad checks

7. Knowingly possessing stolen property

B. Evil Intent

1. Arson

2. Blackmail

3. Embezzlement

4. Extortion

5. False pretenses

6. Forgery

7. Fraud

8. Larceny (grand or petty)

C. Crimes against property

1. Malicious destruction of property

2. Receiving stolen goods (with guilty knowledge)

3. Robbery

4. Theft (when it involved the intention of permanent taking)

5. Transporting stolen property (with guilty knowledge)

D. Crimes against Governmental authority

1. Bribery

2. Counterfeiting

3. Fraud against revenue or other governmental functions

4. Mail fraud

5. Perjury

6. Harboring a fugitive from justice (with guilty knowledge)

7. Tax evasion (willful)

8. Carry a concealed weapon

- 9. Desertion from the Armed Forces
- 10. Dishonorable Discharge from the Armed Services
- 11. Failure to report for military induction
- 12. Drunk driving
- 13. Habitual drunkenness
- 14. Escape from prison
- 15. Gambling violations
- 16. Controlled Dangerous Substances violations
- 17. Liquor violations
- 18. Vagrancy
- E. Crimes committed against person, family relationship, and sexual morality
 - 1. Abandonment of a minor child (if willful and resulting in the destitution of the child)
 - 2. Assault
 - a. Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm
 - b. Assault with a dangerous or deadly weapon
 - 3. Contributing to the delinquency of a minor
 - 4. Gross indecency
 - 5. Incest
 - 6. Kidnapping
 - 7. Lewdness
 - 8. Manslaughter
 - a. Voluntary
 - b. Involuntary, where the statute requires proof of recklessness
 - 9. Mayhem
 - 10. Murder
 - 11. Pandering
 - 12. Prostitution
 - 13. Rape (including "Statutory rape")
 - 14. Sodomy
 - 15. Libel/Slander
 - 16. Mailing an obscene letter
- F. Crimes attempting, aiding and abetting, accessories, and conspiracy
 - 1. an attempt to commit a crime listed in this Section,
 - 2. Aiding and abetting in the commission of a crime listed in this Section,
 - 3. Being an accessory (before or after the fact) in the commission of a crime listed in this Section,
 - 4. Taking part in conspiracy (or attempting to take part in a conspiracy) to commit a crime listed in this Section.
 - (b) Willful neglect or refusal to fulfill statutory duties.
 - (c) Intentional conduct reflecting very negatively on the dignity and integrity of the tribal government.

(v) Court Review

(a)The District Court shall review the removal petition in a new trial. The Judge must hold an initial hearing within 30 days and resolve the case within 90 days. The petitioner

must prove the facts by clear and convincing evidence. Any party to the case shall have a right to appeal.

(b) The defending Council member may be represented by Counsel. If the Court denies the petition then the defending Council member shall be awarded costs and attorney fees not to exceed \$10,000.00.

(c) If the petition was filed by Business Council or the Attorney General the cost of attorney fees shall be paid from tribal funds. If the petition was filed by an individual the cost of attorney fees shall be paid from the deposit. An exonerated Council member charged under paragraph (iv) (b)

or (iv) (c) of this Section shall not be charged again under such paragraph until more than twelve months have passed since the previous petition was filed.

(d) If a petition filed by individual(s) is successful then their \$10,000 deposit shall be refunded. If the attorney fees of a winning defendant are less than \$10,000 then the balance shall be refunded.

ARTICLE VIII- NASHARO COUNCIL

SECTION 1. The Nasharo Council shall consist of eight members with a quorum of five (5) to transact business. Each band shall have two (2) representatives on the Nasharo Council selected by the members of the tribal bands, Chaui, Kitkehahki, Pitahawirata and Skidi. ~~selected from the chieftainships of the following tribal bands: Chani, Kitkehahke, Petahauerat and Skedee, provided:~~

(a) That each band shall have two representatives on the Nasharo Council.

SECTION 2. The Nasharo Council shall have the right to review all acts of the Pawnee Business Council regarding ~~tribal~~ Pawnee Nation of Oklahoma membership and Pawnee Nation of Oklahoma tribal claims or rights growing out of treaties between the ~~Tribe~~ Pawnee Nation of Oklahoma and the United States, provided:

(i) That ~~s~~Such acts of the Pawnee Business Council shall be valid and effective unless formally disapproved by the Nasharo Council within thirty days after such acts are referred to the latter Council

(ii) That ~~w~~Where such acts are disapproved by the Nasharo Council, the Pawnee Business Council may submit them to a referendum of the ~~Tribe~~ Pawnee Nation of Oklahoma and they shall be valid and effective if approved by a majority vote of the adult members voting in person, provided that at least fitly (50) votes are cast of those qualified to vote shall cast ballots in such election.

SECTION 2. 3. Within thirty days after the adoption of this Constitution, the tribal bands, referred to in Section 1 of this Article, ~~The Bands of the Pawnee Nation of Oklahoma~~ shall select their respective representatives under rules and regulations prescribed by the ~~respective band~~ the Chiefs of each band. ~~, subject to the approval of the Superintendent of the Pawnee Indian Agency, provided: The representatives selected shall serve until the next regular selection of members of the Nasharo Council.~~

(a) That the representatives so selected shall serve till the next regular selection of members of the Nasharo Council as provided for in Section 4 of this Article, or until their successors are selected

SECTION. 4. Regular selections of members of the Nasharo Council shall be made on the first Saturday in May 1941, and on the first Saturday in May of each fourth year thereafter, provided

(a) That such

SECTION 3. Vacancies in the membership of the Nasharo Council selections shall be filled made under rules and regulations prescribed by the Nasharo Council.

SECTION 4. The Nasharo Council shall have the power to establish its own offices and to designate its own officers, to fix its own meeting days, and to adopt its own rules of procedure; provided a quorum is present to transact business. Records of the proceedings of this body shall be kept.

SECTION 5. All members of the Nasharo Council shall attend tribal constitution classes as prescribed by the Pawnee Business Council.

~~SECTION 5. Any person selected to membership on the Nasharo Council shall be a member of the band which he represents and shall not be a member of the Pawnee Business Council~~

~~SECTION 6. Vacancies in the membership of this Council shall be filled for an unexpired term in the same manner in which the preceding representative had been selected~~

~~SECTION 7. The Nasharo Council shall have the power to establish its own offices and to designate its own officers to fix its own meeting days and to adopt its own rules of procedure, provided that five members shall constitute a quorum to transact business. Records of the proceedings of this body shall be kept and a copy forwarded to the Superintendent of the Reservation.~~

ARTICLE VI - REMOVAL OF PAWNEE BUSINESS COUNCIL MEMBERS

~~SECTION 1. The Nasharo Council shall investigate complaints of misconduct in office of members of the Pawnee Business Council and upon a proper showing shall call a joint meeting of the Pawnee Business Council and the Nasharo Council to act upon such complaints. Such joint council shall have the power, by a majority vote, after giving the accused a hearing, to remove him from office, provided that at least five members from each of the councils are present.~~

ARTICLE IX - COURTS

SECTION 1. Establishment of Authority - The judicial power of the Pawnee Nation of Oklahoma shall be vested in the current Pawnee Nation Courts established by Resolution 93-65 and shall consist of five Justices and at least one trial court, known as the District Court, and additional courts as may be established by tribal law. The courts shall be a separate branch of government.

SECTION 2. Jurisdiction - The Courts of the Pawnee Nation of Oklahoma shall be courts of general jurisdiction and shall further have jurisdiction in all cases arising under the constitution, laws, and treaties of the Pawnee Nation of Oklahoma. The Supreme Court shall have original jurisdiction in only such cases as may be provided by law, and shall have appellate jurisdiction in all other cases.

SECTION 3. Selection of Judicial Officers - The Justices of the Supreme Court and Judges of District Courts shall be selected by a majority vote of the Business Council. Justices and Judges may by Supreme Court rule assume the duties of a member of the other court to hear a specific case in which the regular Justices or Judges are disqualified or are otherwise unable to perform their duty as to the case.

SECTION 4. Term of Office - The Justices and Judges of the Pawnee Nation of Oklahoma shall serve six year terms beginning at the date of their confirmation in office and continuing if reconfirmed or until their successor shall be duly confirmed and installed.

SECTION 5. Removal - Justices and Judges of the Pawnee nation of Oklahoma may be removed from office only by a majority of the other active Justices and Judges sitting together upon a showing of habitual neglect of the duties of office, oppression in office for personal gain or advantage, or for cause as defined in Section 4, D. In no case may a judicial officer be removed from office because of his decision in any case before the Court.

SECTION 6. Judicial Review - The Courts are specifically authorized to review, in any case properly before them, the actions of the Business Council, or any other officers, agents, or employees of the government of the Pawnee Nation of Oklahoma to determine whether those actions are prohibited by Federal law, this constitution or the laws of the Pawnee Nation of Oklahoma. If the action complained of is outside the scope of authority delegated to entity in question, or if a proper authority is being exercised in a prohibited manner, the Court may enter injunction or other proper equitable relief or declare the action unconstitutional and void as justice may require.

SECTION 7. Effective date, Interim Provision - This article shall be effective upon approval in accord with Article X. The Business Council shall thereafter have the authority to enact such laws as may be necessary for the full and proper functioning of the Courts of the Pawnee Nation of Oklahoma not inconsistent with this article. All current laws regarding courts shall remain in effect and as amended to the extent that they do not conflict with this Constitution.

SECTION 8. Court Funding - The Court shall be funded in a reasonable amount in the annual budget.

1. Court funding shall be equal to or exceed funding amounts for fiscal year 2007.
2. In the event that overall funding shortfalls require budget cuts, the court budget may be reduced but proportionately not more than any other department.

ARTICLE ~~X~~ - ~~VII~~—BILL OF RIGHTS

SECTION 1. All members of the Tribe shall enjoy without hindrance freedom of worship, conscience, speech, press, assembly and association.

SECTION. 2. This Constitution shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the members of this Tribe ~~the Pawnee Nation as citizens of the State of Oklahoma or of the United States.~~ The Indian Civil Rights Acts of 1968 (ICRA) and rights guaranteed under this Act is applicable to the tribal members and other persons within tribal jurisdiction.

SECTION. 3. The individual property rights of any member of the Tribe shall not be altered, abridged or otherwise affected by the provisions of this Constitution and By-laws without the consent of such individual member.

ARTICLE ~~XI~~ - ~~VII~~— AMENDMENTS

Amendments to this Constitution ~~and the attached By-laws may~~ be proposed by a majority vote of the Pawnee Business Council or by a petition signed ~~thirty per cent~~ by at least fifty (50) of the adult members of the Tribe, Pawnee Nation of Oklahoma and if approved by the Secretary of

the Interior, shall be submitted to a referendum vote of the adult members of the Tribe, and shall be effective if approved by a two-thirds vote of the adult members voting in person, provided that at least fifty votes are cast.

This Constitution may be amended by a majority vote of the qualified voters of the Pawnee Nation voting in an election called for that purpose by the Secretary of Interior and conducted pursuant to the rules and regulations of the Pawnee Nation of Oklahoma. Provided, that, at least fifty (50) of those qualified to vote shall cast ballots in such election. The amendment shall become effective when approved by the Secretary of Interior, so long as such approval is required by Federal law, and ratified by the adult members of the Nation.

ARTICLE XII-PLACE OF MEETINGS

Unless some other location in the Pawnee Nation of Oklahoma jurisdiction is designated in the notice, all meetings of the Pawnee Business Council and of the Nasharo Council shall be held at the Pawnee Nation Reserve at Pawnee, Oklahoma.

ARTICLE XIII-ADOPTION

This Constitution when approved by the Secretary of Interior, shall be submitted to referendum vote of the adult members of the Nation, and shall become effective if approved by two-thirds vote of the adult members voting in person, provided that at least fifty votes are cast.

ARTICLE XIV-SAVINGS CLAUSE

All enactments of the Nation adopted before the effective date of this Constitution shall continue in effect to the extent to that they are not inconsistent with this constitution.

ARTICLE XV-SEVERABILITY

If any part of this Constitution is held by the Federal Court to be invalid or contrary to the U.S. Constitution or Federal law, the remainder shall continue to be in full force and effect.

CERTIFICATE OF APPROVAL

I, NANCY JEMISON, Acting Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) and delegated to me by Secretarial Order No. 3150 as extended by Secretarial Order No. 3177, as amended, do hereby approve the Constitution of the Pawnee Nation of Oklahoma. This Constitution is effective on the date ratified by the adult members of the Pawnee Tribe of Oklahoma; PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

NANCY JEMISON
Acting Deputy Commissioner
Of Indian Affairs
Washington, D.C.
Date: April 27, 1998

BY LAWS

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. The President shall preside at all meetings of the Pawnee Business Council, joint meetings of the Pawnee Business Council and the Nasharo Council, and all general tribal meetings. He shall have general supervision of the affairs of the Pawnee Business Council and shall perform all duties appertaining to the office of President.

SECTION 2. In the absence of the President, the Vice President shall perform the duties of that office. In case of vacancy the Vice President shall succeed at once to the office of the President until a President is regularly selected.

SECTION 3. The Secretary-Treasurer shall correctly record the proceedings of all meetings of the Pawnee Business Council joint meetings of the Pawnee Business Council and the Nasharo Council, and all general tribal meetings. He shall make out the order of the business for the President, shall notify all committees of their appointments, shall have custody of the records and all papers of the Pawnee Business Council which records and papers shall be open to inspection at any time in his presence, by any member of the Tribe desiring to read same. He shall keep a correct list of all members of the Tribe, shall authenticate all accounts or orders of the Pawnee Business Council and, in the absence of the President and Vice President, shall call meetings to order until a chairman pro tern is selected. He shall render written reports upon the order of the Pawnee Business Council. He shall issue notices of all meetings and conduct all general correspondence, as directed by the Pawnee Business Council. He shall receive all moneys of the Pawnee Business Council and keep an accurate account of receipts and disbursements. The Secretary-Treasurer shall keep all such moneys entrusted to his care in a special account and shall disburse said funds only upon the order of the Pawnee Business Council. At any time that such account shall amount to more than \$50, he shall file a bond satisfactory to the Pawnee Business Council and the Commissioner of Indian Affairs. The cost of such bond shall be paid out of Tribal moneys.

ARTICLE II—PLACE OF MEETINGS

Unless some other point under the Pawnee Indian Agency Jurisdiction is designated in the call or notice, all meetings of the Pawnee Business Council and of the Nasharo Council shall be held at Pawnee, Oklahoma.

ARTICLE III—ADOPTION

—This Constitution and By laws shall be effective when approved by the Secretary of the Interior and ratified by a majority of the members of the Pawnee Indian Tribe of Oklahoma voting at an election called by the Secretary of the Interior under the rules and regulations which he may prescribe pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936.

—I, Oscar L. Chapman, the Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 26, 1936 (49 Stat. 1967), do hereby approve the attached Constitution and By laws of the Pawnee Indian Tribe of Oklahoma.

OSCAR L. Chapman,

Assistant Secretary of the Interior,
[SEAL]
WASHINGTON, D. C., November 26, 1937

CERTIFICATION OF ADOPTION

—Pursuant to an order, approved November 26, 1937 by the Assistant Secretary of the Interior, the attached Constitution and By laws was submitted for ratification to the members of the Pawnee Indian Tribe of Oklahoma and was on January 6, 1938 duly adopted by a vote of 197 for, and 60 against, in an election in which over 30 per cent of those entitled to vote cast their ballots, pursuant to section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat 4967)

GEORGE H Roams,
President, Pawnee Business Council HARRY D. CUMMINGS,
Secretary Treasurer, Pawnee Business Council.
Li A. Towns, _____
Superintendent, Pawnee Indian Agency.