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BY _____



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**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2022-03¹**

QUESTION SUBMITTED BY: The Honorable Geoffrey Standing Bear, Principal Chief of the Osage Nation.

This office has received your request for an official Attorney General Opinion wherein you ask:

Whether Office of the Attorney General Opinion ONAG 15-01 is correct in that Constitutional language places no affirmative duty on the Minerals Council to present the lease or development activity document to the Office of the Principal Chief to toll the five working day deadline?

I. SHORT ANSWER

No, ONAG 15-01 is no longer correct. The Constitution states in Article XV, Section 4, that mineral leases and development documents approved by the Minerals Council are deemed approved by the Nation after five (5) working days unless the Minerals' Council receives an objection from the Office of the Principal Chief. According to the analysis and guidance provided by the Supreme Court, this Constitutional section has to be read as placing an affirmative duty on the Minerals' Council to present all leases or other development activity documents to the Office of the Principal Chief to toll the five (5) working day deadline. Interpreting this section in the opposite, as in ONAG 15-01, renders the checks and balances in the section impracticable and usurps the Principal Chief's Constitutional authority.

¹ NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

II. DISCUSSION

Article XV, section 4, Management of the Osage Mineral Estate, states in pertinent part:

The Osage Minerals Council shall have the power to consider and approve leases and to propose other forms of development of the Osage Mineral Estate. Mineral leases approved and executed by the Council shall be deemed approved by the Osage Nation unless, within five (5) working days, written objection is received from the Office of the Principal Chief that the executed lease or other development activity violates Osage law or regulation.

Article XV, section 4 vests the Minerals Council with the power and authority to consider and approve leases and propose other forms of development. The section further gives the Principal Chief the authority to object to the approved lease or proposed business development if the lease or development activity violates Osage law or regulation. The Minerals Council must receive the Principal Chief's objection within five (5) business days after the Minerals Council's approval. If not, the lease or business development is deemed approved by the Osage Nation by default.

ONAG-15-01 utilizes a purely textual analysis when concluding that there is no affirmative duty on the Minerals Council to present the lease or development activity document to the Principal Chief for review to toll the five (5) working day deadline. This opinion relies on the omission of express language in the Constitution mandating the Minerals Council to present the documents to the Principal Chief as the lack of an affirmative duty to do so.

The current legal landscape of the Osage Nation is different than it was in 2015. While our People and values have remained unchanged since time immemorial, the Osage Nation legal system is still in its infancy, and changes come quickly as growth occurs. After the Office of the Attorney General pronounced its opinion in ONAG 2015-01, the Supreme Court issued opinions in two cases involving statutory construction, *Standing Bear v. Whitehorn*, SCO-2015-01 (2016), and *Standing Bear v. Pratt*, SCO-2016-1 (2017).

In both *Whitehorn* and *Pratt*, the Supreme Court teaches us to "evaluate constitutional provisions by reviewing the documents as a whole, considering each provision as it relates to the others and giving each word its plain meaning when read in context to avoid absurd or inconsistent results." *Whitehorn*, SCO-2015-01 (2016) at 3 (quoting *RedCorn v. Red Eagle*, SPC-2013-01 (2013) at 3-4. Further, the Supreme Court identified the Constitutional value of separation of function. This value is based not only on recognizing the need for separation but identifying and understanding each governmental body's role in the Osage Nation governmental scheme so that no one body interferes with the powers properly vested in another. *Pratt* at 10-13. The Constitutional provisions should be interpreted with these values in mind to "serve the Osage People according to their Constitution." *Pratt* at 21.

Under the analysis of ONAG 15-01, the Minerals Council has the authority to unilaterally decide lease approval without lease submission to the Principal Chief. Without transparency from the Minerals Council's presentation of lease agreements and other development activity

documents, the Principal Chief could not perform his constitutionally directed duties under Article XV, section 4. This reading divests the Principal Chief's authority granted under the Constitutional provision, which is inconsistent with its intent to separate the powers and provide a check on the powers of each body.

The intent of the Constitution, when taken as a whole, as directed by the Supreme Court, is to promote, and in fact, requires "government efficiency and prohibits...inaction." *Id.* Without presenting the approved lease and other development activity documents to the Principal Chief, he cannot exercise his supreme power as commanded by the Constitution. Additionally, operating under the assumption of ONAG 15-01 causes inaction on behalf of the Executive Branch, which goes against the clear direction provided by the Supreme Court. Therefore, Article XV, section 4 must be read to include the Minerals Council's affirmative duty to provide executed and approved leases and development activities to the Principal Chief to toll the five-day deadline for the Principal Chief's objection based on a violation of Osage Nation law or regulation, or the Nation's approval by default.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General that:

The subsequent Supreme Court's decisions in *Whitehorn* and *Pratt* rendered the analysis used in ONAG 15-01 no longer good law. Using the Supreme Court's directives, Article XV, section 4 must be read to place an affirmative duty on the Minerals Council to present executed and approved leases and development activities to the Principal Chief. The receipt by the Principal Chief tolls the five-day period to object that the approved lease or business development activity violates Osage law or regulation. If the Principal Chief does not object within five days of receipt, the Minerals Council approved lease or business development activity is deemed approved by the Nation. ONAG 15-01 is hereby withdrawn.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Clint Patterson", written over a horizontal line.

Clint Patterson,
Attorney General