

FEB 02 2023

BY

T: 918-287-5514
F: 918-287-5468

1071 Grandview Lane
Pawhuska, OK 74056



February 2, 2023

**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2023-02¹**

QUESTIONS SUBMITTED BY: The Honorable Alice Goodfox, Speaker of the Osage Nation Congress.

This Office has received your request for an Official Attorney General Opinion regarding the resignation of former Osage Nation Gaming Enterprise Board member Mark Simms.

I. QUESTION AND SHORT ANSWER

Is Mark Simms currently a Gaming Enterprise Board Member after he resigned on January 20th “effective immediately” and then sent a letter to rescind his resignation four days later?

No, Mark Simms is not a Gaming Enterprise Board Member as he resigned from his board position creating a board vacancy and cannot legally rescind his resignation as this creates an unallowable reappointment to the Gaming Enterprise Board. Per the Constitution and Osage law, only the Principal Chief can fill a vacancy by appointment or reappoint a member to the Gaming Enterprise Board, with the subsequent confirmation by Congress, and that did not happen.

II. DISCUSSION

On January 20, 2023, Mark Simms penned a letter to Geoffrey Hager, Chairman of the Osage Nation Gaming Enterprise Board (“GEB”), stating, “I hereby resign as Secretary/Treasurer

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.

of the Osage Nation Gaming Enterprise Board effectively [sic] immediately on the above date, January 20, 2023.” Geoffrey Hager transmitted the resignation letter via email to the Principal Chief, Congress, and other Osage Nation officials on the same day, January 20, 2023, stating in the body of the email that Mark Simms resigned GEB position “effective today.” Four days later, Mark Simms wrote another letter to Geoffrey Hager stating, “[a]s of this date, January 24, 2023, I would like to rescind my letter of resignation as Secretary/Treasurer of the Osage Nation Gaming Board.” This attempted recension of the resignation prompts your question as to whether Mark Simms is a GEB member.

The Constitution and the Osage Nation Gaming Reform Act of 2007 (“the Act”) govern GEB appointments. The Act at 14 ONC § 12-104(A) establishes the “Osage Nation Gaming Enterprise” as an unincorporated business enterprise of the Osage Nation. The Act provides for board composition and appointment at 14 ONC § 12-105(A)(1). This section states:

The Board shall consist of five members, appointed by the Principal Chief and confirmed by the Osage Nation Congress. The initial and subsequent terms of office, the appointments shall be for a term of three years. Upon expiration of the term of office, a member shall be eligible for reappointment or replacement, for a period not to exceed six months, pending reappointment or replacement. Each member may hold office under the Osage Nation Constitution by appointment of the Principal Chief..

The Constitution provides that “There shall be established, by Osage law, a Tribal Enterprise Board(s) in the Executive Branch, and the Principal Chief shall appoint qualified professionals to oversee operations of Osage Nation business enterprises, by and with the advice and consent of the Osage Nation Congress.” OSAGE CONST., ART. VII, § 14. Lastly, the Act addresses GEB vacancies in section 14 ONC § 12-105(A)(4). The section provides, “[i]n the event that a Board position becomes vacant as a result of *resignation* [emphasis added], death, removal, or an expired term, the Principal Chief shall make a new appointment within six months of the date of vacancy, which shall be subject to confirmation by the Osage Nation Congress.”

On January 20, 2023, Mark Simms resigned from his position on the GEB “effective immediately.” Upon tendering his resignation, the GEB position became vacant. Per the Act, only the Principal Chief can make new appointments to the GEB due to board vacancies. 14 ONC § 12-105(A)(4).

After four days of consideration, Mark Simms attempted to rescind his GEB resignation. Importantly, there is no provision in the Constitution, the Act, any Osage Nation law, or GEB by-laws that provide for a rescission of a resignation of a GEB Member. The legal documents approved by the Osage people and adopted by the Osage government expressly and exclusively provide for the principal Chief's appointment and reappointment of GEB members with Congress' confirmation. I decline to read into the Constitution or Osage law an allowance for a rescission of a resignation by a GEB Member. Any rescission of one's resignation is legally indistinguishable from a reappointment to the GEB, a power reserved exclusively to the Principal Chief. 14 ONC § 12-105(A)(1). The Principal Chief has not reappointed Mark Simms to the GEB.

III. CONCLUSION

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

Per the Osage Nation Gaming Reform Act of 2007, Mark Simms is not currently a Gaming Enterprise Board Member.

Respectfully submitted,



Clinton N. Patterson, Attorney General