

TABLED

Cherokee Council House
Cherokee, North Carolina

JUL 11 2019

Date

ORDINANCE NO. 655 (2019)

WHEREAS, the Charter and Governing Document authorizes and empowers the Eastern Band of Cherokee Indians (EBCI) Tribal Council to adopt laws and regulations for the general government of the Tribe. Charter and Governing Document, sect. 23 (Sept. 5, 1995) *see also* C.C. §117-10.

WHEREAS, the EBCI Tribal Council constitutes the Eastern Band of Cherokee Indian's Legislative Branch of government. C.C. §117-10.

WHEREAS, in June 2016, the Eastern Band of Cherokee Indians added Cherokee Code chapter 114, Department of Justice and Attorney General. *See* Eastern Band of Cherokee Indians Tribal Council Ordinance No. 118 (2016).

WHEREAS, since the EBCI enacted Ordinance No. 118 (2016) situations arose which show their needs to be amendments.

WHEREAS, "The primary source for all legal services for the EBCI is the Attorney General." C.C. §114-2(a).

WHEREAS, since the Attorney General represents the Tribal Council from time to time, Tribal Council needs a voice when the Executive Committee selects an Attorney General.

WHEREAS, a recent Cherokee Supreme Court case made clear a need for clear statutory language stating that the Attorney General does not have the unconditional right to intervene in the public interest. *EBCI v. Lambert, et. al.*, CSC-17-03/CSC-17-04.

WHEREAS, Cherokee Code §16-2.01 needs to be amended for clarification.

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Annual Council assembled, at which a quorum is present that the Eastern Band of Cherokee Indians Tribal Council amends the Cherokee Code ch. 114, as follows in EXHIBIT A.

BE IT FURTHER ORDAINED the provisions of the Ordinance which amend or adopt new sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall incorporate such amended provisions in the next codification of the Cherokee Code.

BE IT STILL FURTHER ORDAINED should any provision of this Ordinance be determined invalid by the Cherokee Supreme Court, or the Cherokee Court without appeal to the Cherokee Supreme Court, or any other court of competent jurisdiction, those portions of this Ordinance which are not determined invalid shall remain the law of the Eastern Band of Cherokee Indians

BE IT FINALLY ORDAINED that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by: Albert Rose, Birdtown Representative

Cherokee Code

Chapter 114 – DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL

Sec. 114-1. – Department of justice and attorney general.

a. There shall be an Eastern Band of Cherokee Indians Department of Justice, which shall be under the direction and control of the Attorney General.

b. Attorney General. The Attorney General shall serve as the Tribe's chief legal counsel.

1. The Attorney General shall be a lawyer duly licensed in the State of North Carolina and in the Cherokee Court.

2. The Executive Committee shall appoint the Attorney General, subject to Tribal Council confirmation.

3. The Attorney General shall serve at the Executive Committee's discretion.

4. The Attorney General appointment shall not create a property interest.

~~The Attorney General shall be a lawyer duly licensed in the State of North Carolina and in the Cherokee Court, and shall serve as the Tribe's chief legal counsel. The Attorney General shall be appointed by the Principal Chief and shall serve at the discretion of the Principal Chief.~~

c. All lawyers employed within the Department of Justice, as licensed lawyers, shall abide by the Rules of Professional Conduct.

Sec. 114-2. – Duties.

a. To prosecute or provide for the prosecution and defend or provide for the defense of all actions in which the "EBCI, including any of its departments, subdivisions, enterprises, boards, committees, or programs shall be interested, or a party, and to appear for the EBCI in any other court or tribunal in any cause or matter, civil or criminal, in which the EBCI may be a party or interested. The primary source for all legal services for the EBCI is the Attorney General.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1. “All legal services for the EBCI” does not include representing the public interest or the general membership of the Tribe.
2. The Attorney General or the Department of Justice shall not possess the unconditional right to intervene on behalf of the public interest except as expressly authorized in C.C. §7B-1103(b) and C.C. §45-10.
