



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Cherokee Agency
Cherokee, North Carolina 28719

IN REPLY REFER TO.

Michell Hicks, Principal Chief
Eastern Band of Cherokee Indians
P.O. Box 455
88 Council House Loop Cherokee, NC 28719

Dear Chief Hicks:

Attached is signed Tribal Council Resolution No. **195** **Feb. 7, 2008** Should you have any questions regarding this matter please contact me at (828) 497-9131 extension 227.

Sincerely,

A handwritten signature in black ink, appearing to be "D. L. ...", written over a horizontal line.

Superintendent

PASSED

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: FEB 07 2008

RESOLUTION NO. 195 (2008) (Substitute)

WHEREAS, the Eastern Band of Cherokee Indians has the sovereign authority to exclude persons from lands of the Eastern Band in order to protect the integrity, law and order of those lands and the welfare of the members of the Tribe; and

WHEREAS, the Tribal Council has codified its authority to exclude persons from the lands of the Eastern Band at Chapter 2 of the Cherokee Code; and

WHEREAS, DAVID DIXON OWEN is not a member of the Eastern Band of Cherokee Indians and is currently entering or residing on Tribal lands; and

WHEREAS, Tribal Council has good reason to believe that DAVID DIXON OWEN is a threat to the law and order on Tribal lands and a threat to the welfare of enrolled members by engaging in certain harmful conduct; and

WHEREAS, Tribal Council believes that the threat to this Tribe will diminish if DAVID DIXON OWEN is not allowed to remain on lands owned by or held in trust for the Eastern Band of Cherokee Indians; and

WHEREAS, Mr. Owen was provided notice to appear before Tribal Council today for a permanent exclusion hearing and his attorney requested a continuance until the next Tribal Council session; and

WHEREAS, the request was granted on the condition that DAVID DIXON OWEN agree to a temporary banishment until the matter is heard at the next Tribal Council.

NOW THEREFORE, BE IT RESOLVED by the Tribal Council, in Council assembled, with a quorum present and with the number of votes required by Tribal law that DAVID DIXON OWEN IS HEREBY TEMPORARILY EXCLUDED FROM ALL TRIBAL LANDS and IS ORDERED TO VACATE ALL TRIBAL LANDS within twenty-four (24) hours and to remove all personal property from said lands. Any personal property remaining on Tribal lands after that period shall become the property of the Tribe.

BE IT FURTHER RESOLVED that a hearing to permanently exclude DAVID DIXON OWEN from Tribal lands be set at the earliest available time by Tribal Council, whereupon Mr. Owen will be served notice and be allowed to enter upon Tribal land to attend the exclusion hearing at the Tribal Council House.

BE IT FURTHER RESOLVED that this exclusion prohibits DAVID DIXON OWEN from entering on or being present on Tribal lands for any purpose EXCEPT AS REQUIRED BY SUBPEONA OR NOTICE OF SERVICE issued by the Cherokee Tribal Court or an officer of the Tribe with authority to issue such notice.

BE IT FURTHER RESOLVED that if DAVID DIXON OWEN is found on Tribal lands at any time after the effective date of this resolution he shall be in violation of Tribal law and of a lawful order of Tribal Council and a law enforcement officer shall arrest him and take other appropriate legal action against him.

BE IT FINALLY RESOLVED that this resolution shall be effective upon ratification by the Principal Chief.

Submitted by The Office of the Attorney General on behalf of those authorized under Chapter 2 of the Cherokee Code

Hannah Smith

From: David Moore [dmoore@chspa.com]
Sent: Thursday, February 07, 2008 8:47 AM
To: Hannah Smith
Cc: 'Rose Barker'
Subject: RE: banishment

That is acceptable at this time. I hope that we can talk more about this issue in the future.

Thanks.

David

David D. Moore

Coward, Hicks and Siler P.A.

705 W. Main Street

Sylva, NC 28779

828-586-2147

828-586-2605 (fax)

Admitted in North Carolina and Tennessee

From: Hannah Smith [mailto:hannsmi@nc-chokeee.com]
Sent: Thursday, February 07, 2008 8:37 AM
To: David D. Moore
Subject: banishment

David, to respond to your request to continue the banishment set for today for Mr. Owen, the tribal council chairman agreed to allow that. It will be set for the next tribal council day, first Thursday of the month. Tribal Council will issue a resolution that temporarily banishes him until the next council day.

If this is acceptable, please respond to this email. I will mail you the resolutions passed today and notice of the next hearing.

Regards,

2/7/2008

Hannah E. Smith
Assistant Attorney General
Eastern Band of Cherokee Indians
P.O. Box 455
Cherokee, NC 28719
828-497-1009 phone
828-497-7435 fax

Chapter 2 EXCLUSION POWERS OF TRIBE*

*Cross references: Civil procedure, ch. 1; exclusion or rejection of individuals for Tribal gaming, § 16-9.01 et seq.; enrollment, ch. 49; Tribal government, ch. 117.

Sec. 2-1. Power to exclude.

Sec. 2-2. Tribal Council proceedings.

Sec. 2-3. Notice and legal defense rights.

Sec. 2-4. Terms of exclusion.

Sec. 2-5. Votes required for exclusion.

Sec. 2-6. Enrolled members; permanent exclusion.

Sec. 2-7. Request for exclusion action.

Sec. 2-8. List of convictions for which exclusion is a punishment.

Sec. 2-9. Emergency temporary exclusion.

Sec. 2-1. Power to exclude.

- (a) The Tribal Council shall have the power to exclude enrolled Tribal members for sexual offenses against minors and for convictions for trafficking in controlled substance under Chapter 14 of the Cherokee Code. Tribal Council shall also have the authority to exclude enrolled Tribal members for violations of state and federal law where such offenses would constitute trafficking in controlled substance under the Cherokee Code if committed within the territory of the Eastern Band of Cherokee Indians.
- (b) The Tribal Council shall have the power to exclude other persons from Cherokee trust lands when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members.
- (c) The Tribal Council shall have the power to exclude from or prohibit operation of a business on Cherokee trust lands or specific locations thereon, if the business threatens the health, safety or welfare of Tribal members or Tribal natural resources due to spills, accidents, illegal dumping, or other unauthorized releases of hazardous materials into the environment.

Notwithstanding any other provision of law, the Tribe reserves its sovereign immunity and shall not be liable for claims of loss, damage or injury resulting from exclusions.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 630, 2-1-2007; Ord. No. 589, Art. III, 2-8-2007)

Sec. 2-2. Tribal Council proceedings.

The Tribal Council shall exercise its power to exclude persons from Cherokee trust lands only in open session of the Council. Nothing in this section shall prohibit the issuance of Writs of Emergency Temporary Exclusion under 2-9 or the exclusion of persons under 2-3(f).

(Ord. No. 92, 5-5-1994; Ord. No. 589, Art. III, 2-8-2007)

Sec. 2-3. Notice and legal defense rights.

- (a) The Tribal Council shall provide reasonable notice to all persons over whom it exercises the power of exclusion, together with hearing before the Tribal Council.
- (b) The Tribal Council shall provide not less than ten calendar days written notice to such persons prior to hearing. For good cause shown, the Council can waive the ten-day period and exclude immediately.
- (c) Such persons shall be provided with a written statement of the grounds for the proposed exclusion at the same time notice of the hearing is served upon them.
- (d) Such persons shall have the right to appear in person before the Tribal Council, to be represented by legal counsel before the Tribal Council, to require all testimony to be under oath at such hearing, to subpoena witnesses in their behalf for such hearing, to confront or question witnesses bringing exclusion actions against them to the Tribal Council or testifying against them in such hearing.
- (e) Notice of exclusion hearings shall specify the duration of exclusion proposed for each individual.
- (f) Any person convicted of trafficking in controlled substance under Chapter 14 of the Cherokee Code shall not be allowed to enter the territory of the Eastern Band of Cherokee Indians until a hearing on exclusion is held by the Tribal Council. Such hearing shall, if possible, be held prior to their release from custody.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 589, Art. III, 2-8-2007)

Sec. 2-4. Terms of exclusion.

The Tribal Council may exclude persons from Cherokee trust lands for limited periods of time, indefinite periods of time or permanently.

(Ord. No. 92, 5-5-1994)

Sec. 2-5. Votes required for exclusion.

- (a) Exclusion of any person from Cherokee trust lands for a limited period of time not exceeding 90 days shall require a majority vote of the entire Tribal Council.
- (b) Exclusion of any person from Cherokee trust lands for more than 90 days or for an indefinite period of time shall require a two-thirds vote of the entire Tribal Council.
- (c) Permanent exclusion of any person from Cherokee trust lands shall require a three-fourths vote of the entire Tribal Council.
- (d) In this section, "a vote of the entire Tribal Council" means that the vote shall be calculated in the proportion of the number of Tribal Council members present at the exclusion hearing; provided, however, that not all Tribal Council members have to be present or vote at the hearing to satisfy this section, so long as not fewer than seven Council members are present and voting.

(Ord. No. 92, 5-5-1994; Ord. No. 530, 1-6-2005)

Sec. 2-6. Enrolled members; permanent exclusion.

If an enrolled Tribal member is permanently excluded from Cherokee trust lands, then the member's name shall be removed from the membership roll of the Tribe, and all privileges pertaining thereto shall immediately be suspended indefinitely. The removal of the person's name from the roll shall be submitted to the Superintendent of the Eastern Cherokee Agency for approval by the Secretary of the Interior or his authorized representative.

(Ord. No. 271, 7-24-1996)

Sec. 2-7. Request for exclusion action.

The persons with standing to bring a request to the Tribal Council for an exclusion action against a person who is subject to this Chapter are:

- (1) The Principal Chief.
- (2) The Vice Chief.
- (3) Members of the Tribal Council.
- (4) The Chief of the Cherokee Police Department.
- (5) The Tribal Prosecutor.

Handwritten note:] Contact one of these people to get the ball rolling. Legal cannot initiate the proceeding.

(Ord. No. 271, 7-24-1996; Ord. No. 757, 5-16-2001; Ord. No. 589, Art. III, 2-8-2007)

Sec. 2-8. List of convictions for which exclusion is a punishment.

The Clerk of Cherokee Court shall semiannually provide Tribal Council with a list of all persons convicted of crimes during the preceding six months in which banishment is provided by statute. The list shall be transmitted no later than January 31, 2007 and every six months thereafter. The initial list shall include all persons convicted since April 1, 2000.

(Ord. No. 589, Art. III, 2-8-2007)

Sec. 2-9. Emergency temporary exclusion.

(a) *Definitions.* For the purpose of this section the following definitions shall apply:

- (1) *Officer:* A sworn law enforcement officer of the Cherokee Police Department or any other law enforcement officer with the responsibility of enforcing Cherokee Law under authority of this code or a mutual aid agreement.
- (2) *Cherokee Officer:* A sworn law enforcement officer of the Cherokee Police Department only.
- (3) *Drug Offense:* Any act which would violate the provisions of Article XVI of Chapter 14 of the Cherokee Code committed within the territorial jurisdiction of the Eastern Band of Cherokee Indians, whether or not the Cherokee Court has jurisdiction over the individual committing the offense. Considering all appropriate aggravating factors which may be present, the term "Drug Offense" shall not include any act which would be punished as a class D offense under Cherokee law.
- (4) *Non-member:* Any person not officially enrolled as a tribal member in the Eastern

Band of Cherokee Indians

- (5) *Designated Official*: An individual designated by Cherokee Law to enforce the provisions of this section by issuing Writs of Emergency Temporary Exclusion. Any magistrate of the Cherokee Court shall be a designated official for the purposes of this Chapter.
 - (6) *Writ of Emergency Temporary Exclusion (Writ)*: A legally binding order issued by the designated official exercising the power of exclusion of Tribal Council excluding a non-member from the Cherokee Trust lands. The Writ shall clearly state on its face the date, time and location of the next scheduled Tribal Council session. Unless renewed by a vote of the Tribal Council in open council, the Writ shall expire at the end of the next regularly scheduled Tribal Council meeting following its issuance.
- (b) When a Law Enforcement Officer has probable cause to believe that a non-member has committed a Drug Offense, the officer shall bring the non-member before the designated official without unnecessary delay to determine whether a Writ of Emergency Temporary Exclusion is necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members. The commission of any Drug Offense by a non-member shall constitute a per se threat to the integrity and law and order on Tribal lands and territory or the welfare of its members.
 - (c) The officer shall complete a sworn, written application for Writ of Emergency Temporary Exclusion. The application shall contain a written statement of the essential facts constituting the Drug Offense. If the application establishes probable cause to believe that a Drug Offense has been committed by a non-member, the designated official must issue Writ of Emergency Temporary Exclusion. Without exception, a copy of the application and Writ and any appropriate information considered by the Designated Official shall be transmitted to the English Clerk of Tribal Council no later than the beginning of the next scheduled Tribal council or 72 hours after the application was considered, whichever is sooner.
 - (d) Any Cherokee Officer shall be authorized to execute a Writ of Emergency Temporary Exclusion upon a named non-member. The Cherokee Officer shall execute the Writ by serving a copy of the Writ and application upon the non-member and transporting the non-member to any location outside the territorial jurisdiction of the Eastern Band of Cherokee Indians.
 - (e) The issuance and execution of a Writ of Emergency Temporary Exclusion shall be independent of any criminal charges filed against the non-member in Cherokee Court or any other jurisdiction.
 - (f) Regardless of whether a writ is issued, the non-member shall be given notice of the next scheduled meeting of Tribal Council and the application and writ shall be placed upon the agenda. A decision by the Designated Official regarding probable cause shall not be binding on Tribal Council and hearing before Council shall require a de novo review of all appropriate facts and determinations. If no Writ is issued upon application, the Tribal Council may review the facts and hold a proceeding for non-emergency exclusion. At the designated meeting or any subsequent scheduled meeting, Tribal Council may renew the Writ until the next scheduled session, complete the process of formal exclusion under this chapter, or decline to take further action.

(g) The requirements of Cherokee Code Sections 2-2, 2-3, 2-4, 2-5, and 2-7 shall not apply to Writs of Temporary Emergency Exclusion issued under this section, but shall apply to all subsequent proceedings before Council.

(Ord. No. 589, Art. III, 2-8-2007)

The attached Resolution/Ordinance No. 195 dated February 7, 2008 was:

PASSED (X)

KILLED ()

and ratified in open Council on February 7, 2008 by 100 voting for the act and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT	TABLE
Stephen Watty	X				
Perry Shell	X				
Jim Owle	X				
Mike Parker	X				
David Wolfe	X				
Alan Ensley	X				
Butch Goings	X				
Angie Kephart	X				
Abe Wachacha	X				
Susan Toineeta	X				
Marie Junaluska	X				
Tommye Saunooke	X				
TOTAL	100	0	0	0	0

Mike Parker

TRIBAL COUNCIL CHAIRMAN

id BP JBSY
CLERK

Michelle Hicks

PRINCIPAL CHIEF

APPROVED (✓)

VETOED ()

VETO UPHeld () VETO DENIED ()

DATE: 2/12/08

I hereby certify that the foregoing act of the Council was duly:

PASSED ()

KILLED ()

and ratified in open Council after the same has been interpreted by the Official Interpreter and has been fully and freely discussed.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians. Superintendent, Cherokee Indian Agency.

[Signature]

INTERPRETED ()

OMITTED ()