Chief's Address To The Nation

From Page 1

provided by the Governing Council, shall hear complaints of misconduct in office by members of the Business Committee and upon a showing of probable cause that misconduct in office has occurred, shall call a special meeting of the Governing Council to act upon such complaints and shall undertake such other duties as it may be assigned by tribal law.

"Thus, the Grievance Committee is a Constitutional entity, but the process that it operates under is through ordinance or resolution. Regardless, as discussed below, the Grievance process is subject to strict due process requirements enforced by the Sac and Fox Courts. The SFN Constitution also defines the Courts' authority. As the SFN District court noted in In re Constitutionality of Governing Council Meeting of August 30, 2003, Civ-03-07 (Sept. 15, 2003): The CONST. of the Sac and Fox Nation ascribes certain powers to various branches of government with each branch exercising only the powers so delegated. Id., ¶20, page 7.

"Where the Constitution is silent ordinances or resolutions may fill in the gap or provide direction but ordinances or laws can not contradict what is defined in the Constitution.

"Young v. Election Board, SC-01-01 (SFN S.Crt., May 11, 2004), at p. 9. I believe the answers to your question is clear from review of the Sac and Fox Nation Constitution, Article V - Courts and Sac and Fox court decisions interpreting the role of the Court.

"The 1987 Constitution of the Sac and Fox Nation, Article VI, Courts, reads: SECTION 6. The Tribal Courts are hereby specifically authorized to review, in any case before them, the actions of the Governing Council, the Business Committee, or any other tribal officers, agents or entities to determine whether those actions are prohibited by Federal or tribal law or this constitution. If it be found that the action complained of is not within the scope of authority delegated to that body or person by this constitution, or tribal law enacted pursuant to this constitution, or that the action is being undertaken in a manner prohibited by this constitution, tribal law, or Federal law, the courts are authorized to declare any such legislative or executive action unconstitutional and void, and to enter injunctive relief against unlawful actions by any executive officer or body of the Sac and Fox Nation.

"Article V, Sec. 6 clearly authorizes the Courts to review the "actions of the Governing Council, the Business Committee, or any other tribal officers, agents or entities to determine whether those actions are prohibited by Federal or tribal law or this constitution." (Emphasis added.) The District Court has recognized that it has a constitutionally enshrined right to judicially review other branches actions: The Governing Council exercises broad legislative powers but such powers are limited by other provisions of the CONST. including (i) the "Bill of Rights" art. X, (ii) the powers of judicial review under art. V, §§ 2 & 6; and (iii) powers proscribed to the Grievance Committee under art. III.

"In re Constitutionality of Governing Council Meeting, supra, par. 22, at p.8: To hold that the General Council has unlimited authority would render as a nullity the separation of powers clearly expressed in our Constitution. As to the judiciary, such an interpretation would abrogate entirely the provisions of Article V, Section 6, which authorizes the tribal courts to "review, in any case before them, the actions of the Governing Council" as well as the provision which authorizes the courts "to declare ... legislative or executive action unconstitutional and void." To hold that the "supreme governing" clause of the Constitution empowers the General Council to the Constitution itself is repugnant to the fundamental democratic principles first espoused by Aristotle: that we are a government of laws, not men, Politics, Aristotle (Book III, Chapter 16). (emphasis added.) Young v. Election Board of the Sac and Fox Nation Of Oklahoma, et al., SC-01-01 (May 11, 2004). The Court has thus repeatedly recognized its right to review actions of the Council, Election Board and Grievance Committee. In some instances the right asserted, such as due process rights to fair hearing, are such that a delay in enforcement or protection would cause irreparable harm, i.e., harm that is not be capable of repair.

"Most notably, the right to hold office within the Sac and Fox Nation is a valuable right that the SFN courts have recognized as protected: "[t]he Treasurer has a constitutionally protected property interest in his position as an elected official of the Sac and Fox Nation under art. III, § 1 (d)." In re Constitutionality of Governing Council Meeting, supra, at p.10. The Court has recognized the right to elected office is of such a substantial nature that violation of an officer's right it elected office justified a need for emergency extraordinary relief. Id, at p. 11. As the Supreme Court noted, the Grievance proceedings prior to Governing Council can be so flawed as to taint the removal proceedings:

"We also note that the notices to the members of the Governing Council were tenuous at best. The tribe must be given adequate notice of both the charges and the meeting date, and, it would be better practice for new notices to be issued in the event of meeting postponements or adjournments.

"Young & McCormick v. Grievance Committee, SC-97-01 & 02, (SFN S.Crt., August 20, 1998), p. 13. Clearly, the right to hold office is recognized under the Constitution and the SFN Courts have repeatedly had to intervene to protect the right of office holders or those seeking office to a fair and open process:

"We concur with Judge Bohanon and find that an elected official of the tribe holds a valuable right. For that right-that office-to be stripped from an official, the official must be afforded equal protection and due process.

"Young & McCormick, supra at p.10. Conclusion

"The right to hold office within the Sac and Fox Nation is derived from the Sac and Fox Constitution and the SFN Courts have recognized the important nature of both the elective and grievance process. It is therefore the Opinion of the Sac and Fox Attorney General that the Constitution's Article VI, Courts clear statement of the Sac and Fox Courts' right to "review, in any case before them, the actions of the Governing Council, the Business Committee, or any other tribal officers, agents or entities" means the proposed amendment to the Grievance Ordinance is unconstitutional as it infringes upon the Courts' constitutional authority to review and protect due process rights of elected officials in the grievance process.

"Please contact me if you have any further questions.

"Gregory Bigler, Attorney General, Sac and Fox Nation"

**NATIONAL NEWS.* JUSTICE DEPARTMENT ANNOUNCES POLICY ON TRIBAL MEMBER USE OF EAGLE FEATHERS. WASHINGTON – The Department of Justice announced October 12 a policy allowing members of federally recognized Indian tribes to possess or use eagle feathers, an issue of great cultural significance to many tribes. Attorney General Eric Holder signed the new policy after extensive department consultation with tribal leaders and tribal groups. The policy covers all federally protected birds, bird feathers and bird parts.

Federal wildlife laws such as the Bald and Golden Eagle Protection Act generally criminalize the killing of eagles and other migratory birds and the possession or commercialization of the feathers and other parts of such birds. These important laws are enforced by the Department of Justice and the Department of the Interior and help ensure that eagle and other bird populations remain healthy and sustainable.

At the same time, the Department of Justice recognizes that eagles play a unique and important role in the religious and cultural life of many Indian tribes. Many Indian tribes have historically used, and today continue to use, federally protected birds, bird feathers or other bird parts for their tribal cultural and religious expression.

"This policy will help ensure a consistent and uniform approach across the nation to protecting and preserving eagles, and to honoring their cultural and spiritual significance to American Indians," said Attorney General Holder. "The Department of Justice is committed to striking the right balance in enforcing our nation's wildlife laws by respecting the cultural and religious practices of federally recognized Indian tribes with whom the United States shares a unique government-to-government relationship."

The department issued this policy to address the concerns of tribal members who are unsure of how federal wildlife law enforcement efforts affect them and because this uncertainty may hinder or inhibit tribal religious and cultural practices. The department first announced in October 2011 its consideration to formalize a policy on eagle feathers and sought tribal input. The department held formal consultations with tribal leaders in June, July and August 2012.

"From time immemorial, many Native Americans have viewed eagle feathers and other bird parts as sacred elements of their religious and cultural traditions," said Ignacia S. Moreno, Assistant Attorney General of the Justice Department's Environment and Natural Resources Division. "The Department of Justice has taken a major step forward by establishing a consistent and transparent policy to guide federal enforcement of the nation's wildlife laws in a manner that respects the cultural and religious practices of federally recognized Indian tribes and their members."

"The Justice Department's policy balances the needs of the federally recognized tribes and their members to be able to obtain, possess and use eagle feathers for their religious and cultural practices with the need to protect and preserve these magnificent birds," said Donald E. "Del" Laverdure, Principal Deputy Assistant Secretary for Indian Affairs. "Its reasoned approach reflects a greater understanding and respect for cultural beliefs and spiritual practices of Indian people while also providing much-needed clarity for those responsible for enforcing federal migratory bird protection laws."

"This policy helps to clarify how federal law enforcement goes about protecting these special birds and also should reassure federally recognized tribal members that they do not have to fear prosecution for possessing or using eagle feathers for their religious and cultural purposes," said Brendan V. Johnson, U.S. Attorney for the District of South Dakota and the Chairman of the Native American Issues Subcommittee of the Attorney General's Advisory Committee.

"Eagles and other native migratory bird species are a vital part of our nation's natural heritage, and we remain dedicated to providing every American with the opportunity to experience them in the wild," said U.S. Fish and Wildlife Service Director Dan Ashe. "This new policy honors the past while looking to the future, contributing to the preservation of these species and ensuring that tribal members can continue their religious and cultural practices for generations to come." The policy provides that, consistent with the Department of Justice's traditional exercise of its discretion, a member of a federally recognized tribe engaged only in the following types of conduct will not be subject to prosecution:

*Possessing, using, wearing or carrying federally protected birds, bird feathers or other bird parts (federally protected bird parts);

*Traveling domestically with federally protected bird parts or, if tribal members obtain and comply with necessary permits, traveling internationally with such items;

*Picking up naturally molted or fallen feathers found in the wild, without molesting or disturbing federally protected birds or their nests;

*Giving or loaning federally protected bird parts to other members of federally recognized tribes, without compensation of any kind;

*Exchanging federally protected bird parts for federally protected bird parts with other members of federally recognized tribes, without compensation of any kind;

*Providing the feathers or other parts of federally protected birds to crafts persons who are members of federally recognized tribes to be fashioned into objects for eventual use in tribal religious or cultural activities.

The Department of Justice will continue to prosecute tribal members and non-members alike for violating federal laws that prohibit the killing of eagles and other migratory birds or the buying or selling of the feathers or other parts of such birds.

October activities. The month of October was a busy month for conferences, conventions, summits, consultations, and travel. The attendance at these meetings was necessary and with expenses paid since I attended as an invited speaker, panelist, tribal leader, board member, and representative of our Sac and Fox Nation. Through October, I:

October 3 - gave the Opening Remarks at and Participation in the Listening Session on Tribal_Justice Plan Implementation, Tulsa, OK

October 17 - attended the National Indian Education Association (NIEA) Tribal Leaders Summit, Oklahoma City, OK

October 19 - was invited to speak on the panel: THE ECONOMY - Great Plains Perspectives on Tran boundary Tar" at the Society of Environmental Journalists 22nd Annual Conference, hosted at Texas Tech University in Lubbock, TX

October 20 - attended as NCAI Southern Plains Area Vice-President -NCAI Executive Board Meeting, Sacramento, CA

October 21-26 - attended the NCAI 69th Annual Convention, Sacramento, CA

October 29 - scheduled to attend as Vice-Chairman / Secretary of the Self Governance Communication Education Tribal Consortium (SGCETC) Board Meeting, Washington DC; meeting cancelled due to extremely bad weather forecast, *Hurricane Sandy*. *Oct 30-Nov 1* - scheduled to attend as Southern Plains Alternate - Self Governance Advisory Committee(s) Dept. of Interior and Indian Health Service (SGAC - DOI/IHS) Meetings, Washington DC; meeting cancelled due to extremely bad weather forecast, *Hurricane Sandy.*

It is an honor and privilege to serve as Chief of the Sac and Fox Nation.

Sincerely,

George Thurman, Principal Chief

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