



Committee Report

SECTION A.

Committee on: Governmental Operations

Date of Meeting: September 7, 2011

Presiding Officer: Daniel Boone

SECTION B.

FINAL COMMITTEE RECOMMENDATION

Draft Report and Findings

Motion-To Adopt. Raymond Red Corn made a motion to adopt the findings of the Treasury hearing dated September 12, 2011. Motion was seconded and passed with 4 yeas and 0 nays.

Motion-To Amend. Raymond Red Corn made a motion to amend the following language on Page 15 as follows:

“Individual actions of the Treasurer described in these findings may not cause the Congress to consider removal. Nevertheless, the cumulative weight of these actions and the disregard for Osage law and the Osage constitution require the committee to recommend the Osage Nation Congress form a Committee of Inquiry to determine if such actions warrant a trial for removal.

The Government Operations committee hereby recommends the Congress form a Committee of Inquiry in accordance with Rule 12.1 of the Congressional Rules for the purpose of making such a determination.”

Motion was seconded and passed with 4 yeas and 0 nays.

Motion-To Amend. Shannon Edwards made a motion to amend the date on the Draft Report and Findings to September 7, 2011. Motion was seconded and passed with 4 yeas and 0 nays.

2ND OSAGE NATION CONGRESS
3RD Regular Session

DANIEL BOONE, *Chairman*
RAYMOND RED CORN, *Vice Chair*

GOVERNMENT OPERATIONS COMMITTEE
OSAGE NATION CONGRESS

REPORT AND FINDINGS

Transmitted to the full body of the Osage Congress
September 12, 2011



September 2011

VOTES IN THE AFFIRMATIVE:
VOTES IN THE NEGATIVE:
ABSTENTIONS:
ABSENCES:

STAFF DESIGNATED TO TRANSMIT THIS REPORT TO THE
OSAGE NATION CONGRESS:
Loyed Gill, Legislative Counsel
Barbara Rice, Clerk of the Congress

appropriation. An exception to this provision is allowed for bonuses awarded in accordance with Osage law.³

The Treasurer hired a new employee, Jonna Hopper, for the position of Executive Assistant of Treasury on February 28, 2011. The "Employee New Hire Information Form" for Ms. Hopper is signed by William Kemble, Bill Foster and John D. Red Eagle.⁴ At the time the Treasurer hired Jonna Hopper, ONCA 09-11 and its 1/26th pay rate provision were in effect. The Employee New Hire Information Form clearly shows that Ms. Hopper was hired at the pay rate of \$15.57 or \$32,500 per year, but the annual appropriation for the position of Administrative Assistant⁵ is only \$14.31 or \$29,882 per year.⁶

The Treasurer has the responsibility to assure the proper disbursement of funds in the control of, or belonging to the Osage Nation under Section 3-312 of the Treasury Law, ONCA 06-02 as amended. In the circumstance presented, the Treasurer initiated and authorized by his signature the disbursement of funds in the form of a salary to the Executive Assistant of Treasury, and by doing so violated Osage law. Mr. Kemble stated that he consulted with Bill Foster in the Human Resources Department about the salary and that Bill Foster told him it was allowable. (Transcr. of W. Kemble at P. 181, Lns 2-19) The Treasurer, Mr. Kemble, has a duty to be aware of all appropriations and appropriation laws of the Osage Nation.

The Controller, Clint Hill, testified that he sees the vast majority of new hire forms, and that he checks the pay rates against the appropriation laws to make sure they comply with Osage law. (Transcr. of C. Hill at P. 16, Lns 2-8) The Treasurer did not present Ms. Hopper's Employee New Hire Information Form to Mr. Hill for signature, but instead signed it himself and then presented it to the Principal Chief and Human Resources Director for signature. (Transcr. of C. Hill at P. 6, Lns 10-12)

Pam Jester, the payroll accountant, testified that she enters the payroll each pay period, and she enters the new hire pay rates when they are received. (Transcr. of P. Jester at P. 71, Lns 6-12) She stated that she does not question the pay rate, nor does she have the authority to question the pay rate as long as the required signatures are present. (Transcr. of P. Jester at P. 71, Lns 20-25) The Employee New Hire Information Form for Ms. Hopper received the requisite signatures for approval, so by not presenting the form to the Controller for review and approval, the Treasurer took the responsibility

³ Id.

⁴ See Employee New Hire Information Form for Jonna Hopper.

⁵ The Treasurer changed the name of the position from Administrative Assistant to Executive Assistant of Treasury. See electronic mail of January 6, 2011 from William Kemble to Bill Foster.

⁶ See Employee New Hire Information Form for Jonna Hopper.

The Treasurer has implemented new policies and procedures, in the absence of an emergency, without submitting them to the Osage Nation Congress for approval in violation of the Treasury law, ONCA 06-02 as amended.

AND

The Treasurer has failed to adhere to the existing approved policies and procedures, in the absence of an emergency, in violation of the Treasury law, ONCA 06-02 as amended.

The Treasurer has implemented two new policies and procedures that he has designated as "protocols."⁸ One new policy and procedure is the "Procurement Protocol." Under the Treasury law, ONCA 06-02 as amended, Section 3-316, the Treasurer has unilateral authority to designate other persons who will have authority to "contract for, purchase and/or issue and approve purchase requisitions, purchase orders and authorizations for payment for any and all goods and services..."⁹ but the Treasurer's ability to change the procedure for contracting is limited. Under the same section, the Treasurer is required to submit his proposed financial policies and procedures to the Osage Nation Congress for review and approval.

After being subpoenaed for documentation, the Treasurer sent a letter to the Principal Chief setting out his designees who will have contracting and purchasing authority up to \$25,000, which is wholly within his authority under the law.¹⁰ Conversely, the new procurement protocol changes the procedure for contracting by requiring that all ordering of goods and services must be performed by the Purchasing department, and further, that all vendor invoices must be sent directly to the Accounting department instead of being received by departments for review and approval before they are sent to accounting with a check request.¹¹ This new procedure has not been submitted to the Osage Nation Congress for approval as is required by law.

The Treasurer has made conflicting statements about whether the "Procurement Protocol" is currently in place. (Transcr. of W. Kemble at P. 96, Lns. 11-15; and at P. 129, Lns. 12-20) It does not appear to be completely implemented as of the date of this hearing, July 15, 2011. However, it must be submitted to the Osage Nation Congress for approval, prior to it being implemented to comply with ONCA 06-02 as amended, Section 3-316. There is a provision in ONCA 06-02 as amended that allows the Treasurer to "exercise emergency fiscal authority necessary to protect life,

⁸ See Procurement Protocol submitted by Treasurer.

⁹ ONCA 06-02 as amended, Section 3-316.

¹⁰ See Letter of July 7, 2011 from William Kemble, Treasurer, to Principal Chief Red Eagle.

¹¹ See Procedure No. 35-15, Osage Accounting Policies and Procedures.

Controller shall approve all check requests regardless the amount of the check request.”¹⁴ The procedure implemented by the Treasurer allows the accountants in the Accounting department to sign payables as final authorization with no review or signature required of the Treasurer or the Controller. Under this procedure verbally authorized by the Treasurer, a department director and one accountant assigned to that department could conspire to purchase thousands of dollars worth of non-employment related goods and services without detection until an audit is performed. It is no guarantee that an audit would detect this activity immediately. This new procedure is out of compliance with the approved Osage Accounting Policies and Procedures, and it has not been submitted to or approved by the Osage Nation Congress.

It is of concern to this body that the Treasurer has unilaterally decided to relax the internal controls on payables making it easier for fraud to be committed upon the Osage Nation. (Transcr. of W. Kemble at Pgs. 172-173) It is also troubling that the Treasurer has implemented this new policy and procedure at a time when he believed the Nation to be experiencing a financial emergency due to a lack of policies and procedures in place. The relaxation of approved policies and procedures is inconsistent with the idea that the Nation needs more policies and procedures in place to secure its funds. The Treasurer is required to submit his policy and procedure on payables under three hundred dollars (\$300) to the Osage Nation Congress for review and approval or he can designate each accountant with that authority in writing in order to comply with ONCA 06-02 as amended.¹⁵

The Committee recommends that Mr. Kemble, as Treasurer, submit all proposed policies and procedures to the Osage Nation Congress for approval prior to implementing them, unless there is an actual emergency or he is otherwise authorized to make the change under Osage law. In the case of an actual emergency, it is the recommendation of this body that the Treasurer notify the Principal Chief and the Osage Nation Congress in writing of such emergency, and then submit his proposed policies and procedures that address the emergency as soon as possible after they have been implemented. The Committee recommends that Mr. Kemble terminate the practice of allowing Accountants alone to have final signature authority on payables under three hundred dollars (\$300) due to the increased risk of fraud created by the practice.

The Committee also recommends that the Treasurer adhere to the limits he sets forth allowing contracting signature authority to designated personnel. In the case of Tammy Moxley, she is limited to authorization of purchase orders of \$25,000 until the Treasurer submits a new authorization in writing.¹⁶ The Treasurer is under the Executive branch, and he reports to the

¹⁴ See Procedure No. 40-05, Osage Accounting Policies and Procedures.

¹⁵ ONCA 06-02 as amended, Section 3-316.

¹⁶ See Letter of July 7, 2011 from William Kemble, Treasurer, to Principal Chief Red Eagle.

have been transferred to other accounts leaving Osage public funds at risk. The second problem is the large number of transfers required to keep the funds collateralized significantly increases the risk for accounting errors or mistakes to occur either within the Treasury or at FNBP.

The great effort spent monitoring and transferring these funds into and out of accounts at FNBP is executed for what appears to be the sole purpose of meeting collateralization limits at FNBP. There is not any mandate that the Nation must utilize FNBP, and it would certainly be a better use of personnel resources to open an account at another institution capable of meeting our deposit demands. More importantly, by utilizing another institution, the Treasurer can ensure that all accounts are properly collateralized and in compliance with the Osage Accounting Policies and Procedures.

In response to a question from Congressman Supernaw about a statement the Treasurer made about moving money to protect it from tornadoes,¹⁸ Mr. Kemble stated in his testimony:

That's kind of the whole purpose – that's kind of the whole purpose of getting it collateralized, being insured. I mean just something happens to the bank. It gets robbed, tornado hit, yeah. I always kid around with the Treasury department and say something like that. (Transcr. of W. Kemble at P. 196, Lns. 8-13)

The tone of Mr. Kemble in making this statement is not conveyed in this quote, but it was one of jest. The Committee does not share this sentiment. The risks to banking institutions are more than robberies or acts of God. The FDIC reports that one hundred thirty-eight (138) community and regional banks have failed between January 1st and August 15th of 2011.¹⁹ In October of 2010, the amount of uncollateralized Osage funds at risk of loss because they were over the collateralization limit was \$1,714,837.81.²⁰ Again in January of 2011, there were \$2,079,497.54²¹ uncollateralized funds at risk of loss. The possibility of losing these large sums of money to a bank failure is precisely why the approved Osage Accounting Policies and Procedures require all funds to be collateralized. The increased number of bank transfers could be a potential lapping scheme to cover misappropriated funds in another bank account or accounts.

¹⁸ See Transcr. of W. Kemble at P. 100, Lns. 2-14.

¹⁹ See FDIC Failed Bank List.

²⁰ See Attachment "A" to Letter of July 13, 2011 from William Kemble to Elizabeth Hembree of First National Bank of Pawhuska.

²¹ Id.

investigation take place regarding the policies of First National Bank of Pawhuska on signature authority.

The issue of transferring money out of Minerals Council accounts also has significant political ramifications. The Osage Minerals Council and its constituents have consistently questioned the motives of this Osage Nation Government toward the Mineral Estate since the government was formed in 2006. There is a persistent fear that the Osage Nation Government will somehow seize control of the Mineral Estate or the funds that the Minerals Council controls. The fact that the Treasurer unilaterally transferred funds out of accounts of the Minerals Council only feeds these fears. The Treasurer stated that his only intent was to avoid risk by moving these funds into a collateralized account, and that these funds were the obvious choice because they were large amounts of money without any foreseeable transactions. (Transcr. of W. Kemble at Pgs. 116-117) If the Treasurer had not used these larger accounts, he would have had to look to many of the smaller accounts to achieve the same amount of money in order to meet the collateralization limit. The Treasurer did not consult with the Minerals Council before he transferred the funds, and he only consulted with the Principal Chief about the transfer after it had occurred. (Transcr. of W. Kemble at P 118, Lns. 3-16) Moreover, while the C-395 funds were out of the account at FNBP, they were completely out of the control of the Minerals Council. This is a fact that this Committee finds unacceptable.

The Committee finds that the Treasurer should be directed, by Executive Order, not to transfer or withdrawal funds out of Minerals Council accounts without the consent of the Minerals Council. If the Principal Chief does not act, the Committee recommends that legislation be introduced to address Minerals Council account transfers. Again, the Treasurer can avoid the need to appease FNBP and its collateralization limit by opening a new account at another banking institution. That course of action will also avoid commingling Minerals Council administration funds with the federal funds received by the Osage Nation.

has shown little regard for the laws that govern his office. Mr. Kemble must realize that he is required to abide by the laws of the Osage Nation or be held accountable for willful neglect of duty and malfeasance in office.

Additionally, the Treasurer must ensure the funds of the Osage Nation are protected by utilizing banking institutions capable of meeting the collateralization demands of the Osage Nation. Protection of assets is a fundamental duty of the Treasurer of the Osage Nation, and one that should be pursued with diligence. The Treasurer's action of internally declaring an emergency without notifying any other elected officials, implementing two new procedures without proper approval under the guise of another name, and implementing those procedures under a self determined emergency that only he knows about are not diligent efforts to cure the risk of loss to the Osage Nation.

Mr. Kemble must communicate with the independent auditing firm, Archambo & Mueggenborg, to close the books for fiscal years 2009 and 2010. The problem with the posting of the entries for 2009 is that the auditor (Archambo & Mueggenborg) changed the account number structure and the Treasurer has not been able to figure out how to post the entries. This could be cured by a simple telephone call to the auditing firm to ask how the entries should be posted. However, the Treasurer appears to be unwilling to communicate with the independent auditor. Mr. Kemble's inability to figure out how to post the entries and his unwillingness to ask the auditor how to post the entries is causing detriment to the Osage Nation.

This Committee finds that Mr. Kemble must improve his communication with elected officials, and he must comply with the reporting requirements to the Osage Nation Congress and the Osage News. The Osage Nation Treasurer, as a position in general, should be knowledgeable, respectful and compliant of Osage law, forthcoming with information when requested by elected officials, capable of complying with the duties of the office and avoiding delay in the performance of duties. This Committee finds that Mr. Kemble is not currently meeting those standards.

The Principal Chief, John D. Red Eagle, and the Human Resources Director, Bill Foster, signed off on a new employee hire information form for a pay rate that violated Osage law. The Committee recommends that the Office of the Principal Chief and the Human Resources Departments review their processes for ensuring that they are complying with appropriation restrictions set out in Osage law.