



OSAGE NATION CONGRESS

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*

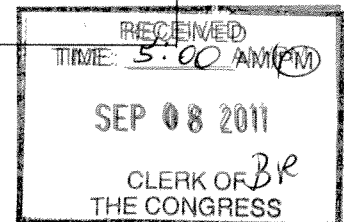
GOVERNMENT OPERATIONS COMMITTEE
OSAGE NATION CONGRESS

REPORT AND FINDINGS

Transmitted to the full body of the Osage Congress
September 7, 2011



September 2011



Report

The Government Operations Committee, by an affirmative majority vote of the members, on September 7, 2011, adopted the following report and findings and ordered them to be transmitted to the full body of the Osage Nation Congress.

SUBJECTS OF THE REPORT: Principal Chief John D. Red Eagle; William Kemble, Treasurer; and Bill Foster, Human Resources Director.

CONGRESSIONAL FINDINGS:

1. The Principal Chief, Human Resources Director and the Treasurer violated ONCA 09-11 as amended, by signing and filing the Employee New Hire Information Form that authorized a rate of pay for the Executive Assistant of Treasury, which amounted to more than 1/26th of the total appropriation for that position per pay period;
2. The Treasurer has breached his duty to see that all monies are disbursed according to appropriation and Osage law by authorizing the payment of compensation to the Executive Assistant of Treasury, which amounted to more than 1/26th of the total appropriation for that position per pay period;
3. 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;
4. 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;
5. The Treasurer has allowed funds to remain undercollateralized periodically throughout this fiscal year at First National Bank of Pawhuska, placing funds at risk of loss;
6. The Treasurer has moved Minerals Council funds without the knowledge or authorization of the members of the Minerals Council leaving C-395 funds temporarily outside the control of the Minerals Council;
7. The Treasurer has failed to perform his duty to submit quarterly reports of the financial status of the Nation to the Osage Nation Congress; and he has failed to perform his duty to publish quarterly executive summaries of monthly financial statements in the Osage News within forty-five (45) days of the end of each fiscal quarter.
8. 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.

RECOMMENDATION: The Committee recommends that the Osage Nation Congress adopt this report and its findings, transmit it to the subject parties and the Attorney General, and release it to the public for publishing. The Committee further recommends the Osage Nation Congress form a Committee of Inquiry in accordance with Rule 12.1 of the Congressional Rules for the purpose of determining if the Treasurer's actions warrant a removal trial.

VOTES IN THE AFFIRMATIVE: 4 yeas

Congressman Red Corn	yes
Congresswoman Branstetter	yes
Congresswoman Edwards	yes
Congresswoman Supernaw	yes

VOTES IN THE NEGATIVE: 0 nays

ABSTENTIONS: 0

ABSENCES: 0

STAFF DESIGNATED TO TRANSMIT THIS REPORT TO THE OSAGE NATION CONGRESS:

Loyed Gill, Legislative Counsel

Barbara Rice, Clerk of the Congress

FINDINGS

The Principal Chief, Human Resources Director and the Treasurer violated ONCA 09-11 as amended, by signing and filing the Employee New Hire Information Form that authorized a rate of pay for the Executive Assistant of Treasury, which amounted to more than 1/26th of the total appropriation for that position per pay period.

AND

The Treasurer has breached his duty to see that all monies are disbursed according to appropriation and Osage law by authorizing the payment of compensation to the Executive Assistant of Treasury, which amounted to more than 1/26th of the total appropriation for that position per pay period.

In April of 2009, the Osage Nation Congress passed ONCA 09-11, the “2010 Budget Parameter and Limitation Act” by majority vote and veto override. This bill was later amended to strike “2010” out of its title and to make it applicable to each fiscal year until superceded or rescinded. ONCA 09-11, although amended several times, retained one provision that is pertinent to this finding until it was superceded on March 29, 2011.¹ Until March 29, 2011, Section 4 of ONCA 09-11 restricted the pay rate of salaries to pay no more than 1/26th of the appropriated salary per pay period.² The purpose of this provision was to stop the practice of paying salaries at higher levels than originally appropriated when a position was unfilled for a portion of a fiscal year. Employees were being hired, and offered whole annual appropriations as salary when there were only eight or nine months left in the fiscal year, thereby increasing the pay rate to a point that if calculated annually would surpass the annual appropriation for the position. By putting in place the 1/26th salary restriction, it did not matter how much money went unspent during a fiscal year, a position could not be paid more than 1/26th of the total salary appropriated for an eighty (80) hour pay period.

Through subpoenaed documents and the hearings of July 14th and July 15th 2011, we discovered that the Treasurer, the Human Resources Director and the Principal Chief have all violated the 1/26th provision of ONCA 09-11. Section 4 of ONCA 09-11 reads as follows:

¹ ONCA 09-11 as amended was superceded by ONCA 11-32.

² ONCA 09-11 as amended, Section 4.

Annual appropriated salaries shall be paid at no more than the maximum rate of one twenty-sixth (1/26th) of the appropriated salary amount per pay period. This shall in no way restrict salary increases approved by supplemental 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-

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.

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 upon himself to make sure that the pay rate for Ms. Hopper complied with Osage law.

In addition, the Human Resources Department is also responsible to verify that the requested pay rate for an employee does not exceed the appropriation for that position or violate any appropriation restrictions set out in Osage law. In this case the Human Resources Director, Bill Foster, signed off on the new hire form authorizing the pay rate that violated the 1/26th provision of ONCA 09-11 as amended.

Similarly, the Chief also had a duty to verify the legality of the pay rate for Ms. Hopper since his authorization is required on the new hire form. The Chief signed the form in violation of the 1/26th provision of ONCA 09-11 as amended.⁷

More information is needed to determine whether there was a direct intent to violate the law by the Human Resources Director or the Principal Chief. According to the testimony of the Treasurer, he relied on the opinion of the Human Resources Director regarding the legality of Ms. Hopper's salary. Mr. Kemble failed to verify its legality himself or check with the Controller, Mr. Hill, who is the person assigned to verify new hire and status forms against current appropriations and law in Treasury and Accounting. If the Treasurer is not familiar with current appropriations and the legal restrictions placed on those appropriations, he should first, utilize the personnel resources of the Accounting staff and second, study the appropriations and the related Osage laws to meet his duty of properly disbursing funds in the control of, or belonging to the Osage Nation under Section 3-312 of the Treasury Law, ONCA 06-02 as amended.

The Committee recommends that these findings be forwarded to the Attorney General of the Osage Nation for review and investigation for misuse of public money under Osage law.

⁷ 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,

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.

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, property, and the integrity of the Osage Nation.”¹² During testimony, the Treasurer stated that there was an emergency, and the emergency amounted to a lack of policies and procedures in place for Accounting and Treasury. (Transcr. of W. Kemble at P. 91, Lns. 1-17) He has claimed that he “mentioned” it to the Principal Chief, but has not put anything in writing to the Principal Chief or the Osage Nation Congress. (Transcr. of W. Kemble at P. 89, Lines 12-25; P. 90, Lines 1-2; and at P. 93, Lns. 4-9) The Treasurer has not put anything in writing to notify the Osage elected officials that he believed the financial condition of the Osage Nation was in a state of emergency. This body is not convinced that an emergency existed, and therefore the Treasurer is required to submit his proposed policies and procedures to the Osage Nation Congress for approval before they may be implemented.

In the letter of July 7, 2011, the Treasurer designated the Procurement Officer, Tammy Moxley, to authorize purchase orders up to twenty-five thousand dollars (\$25,000).¹³ In testimony, the Treasurer stated that Tammy Moxley has authorized purchase orders over twenty-five thousand dollars (\$25,000), a direct violation of the written authority given to Ms. Moxley. (Transcr. of W. Kemble at P. 202, Ln. 25; and at P. 203, Lns. 1-20)

Mr. Kemble stated in testimony that he does not think the current Accounting Policies and Procedures are in effect because they were passed by previous Tribal Councils, and not approved by the Osage Nation Congress. (Transcr. of W. Kemble at P. 90, Lns. 7-23) Mr. Kemble is incorrect. The current Accounting Policies and Procedures are in effect and enforceable under the Savings Clause of the Osage Constitution. Article XXII of the Osage Constitution states:

All laws, resolutions, ordinances and acts of the Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma, taken before the effective date of this Constitution, including elections and terms of office, shall remain in full force and effect to the extent that said action is consistent with the Osage Nation Constitution and until said laws, resolutions, ordinances and acts are altered by the Osage Nation government, as organized under this Constitution, after the effective date of this Constitution.

Osage Constitution, Article XXII.

The second policy and procedure that has been changed by the Treasurer is the relaxation of internal controls by not requiring the Treasurer or the

¹² ONCA 06-02 as amended, Section 3-108(H).

¹³ See Letter of July 7, 2011 from William Kemble, Treasurer, to Principal Chief Red Eagle.

Controller to sign off on payables under three hundred dollars (\$300.00). The current approved procedure states the “Chief Financial Officer or 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

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

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

writing.¹⁶ The Treasurer is under the Executive branch, and he reports to the Principal Chief, but he is also responsible to the Osage Nation Congress, as representatives of the Osage People, due to its power of appropriation and its inherent authority of oversight over the People's money, in addition to the statutory authority contained in Osage law.

The Treasurer has allowed funds to remain undercollateralized periodically throughout this fiscal year at First National Bank of Pawhuska, placing funds at risk of loss.

The Osage Nation has accounts at several banks in Osage County, but the accounts at First National Bank of Pawhuska ("FNBP") have regularly exceeded the collateralization limit of two million dollars (\$2,000,000) over the last eleven months. (Transcr. of W. Kemble, P. 145, Lns. 15-25; and at P. 146, Lns. 1-5) The collateralization of Osage Nation funds is required by Osage Accounting Policies and Procedures.¹⁷ The funds can be collateralized by the Federal Deposit Insurance Corporation ("FDIC"), or they can be collateralized by the financial institution holding the deposit by purchasing financial securities. First National Bank of Pawhuska has set its maximum collateralization limit for the Osage Nation at two million dollars (\$2,000,000). (Transcr. of W. Kemble, P. 115, Lns. 14-17; and at P. 143, Lns. 7-24) The Principal Chief, Assistant Principal Chief and the Treasurer met with FNBP executives to request additional collateralization up to three million dollars (\$3,000,000), but FNBP refused to provide additional collateral. (Transcr. of W. Kemble at P. 100, Lns. 2-14; and at P. 116, Lns. 2-12) The effect of this is that each time the sum total of all Osage Nation accounts held at FNBP exceeds two million dollars (\$2,000,000), the amount of money in excess of two million dollars (\$2,000,000) is at risk of loss.

The First National Bank of Pawhuska has asked the Treasurer to move money out of accounts temporarily to make the total deposit of all Osage Nation accounts held at that institution less than the two million dollar (\$2,000,000) collateral threshold. (Transcr. of W. Kemble at P. 143, Lns. 7-25; P.144, Lns. 1-3; and at P. 145, Lns. 4-14) The Congress, during hearing testimony of Mr. Kemble, suggested that the persistent problem of exceeding collateralization limits at FNBP could be solved by opening accounts at other banking institutions that can provide adequate collateral for large deposits. (Transcr. of W. Kemble at P. 137, Lns. 1-24) Mr. William Kemble agreed that is a possible solution. (Transcr. of W. Kemble at P. 137, Lns. 1-24) The current method of solving the problem utilized by the Treasurer is to move money into accounts at other institutions until the account balances at First National Bank of Pawhuska have decreased to a point that the money can be returned to FNBP and still have the total balance be under the two million

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

¹⁷ Procedure No. 31-05, Osage Accounting Policies and Procedures.

dollar (\$2,000,000) collateral limit. There are two problems present here. First, the collateralization limit is, at times, exceeded prior to or after funds 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.

The Committee recommends the Treasurer open new account(s) at a new banking institution capable of meeting the collateralization needs of the Osage Nation. In so doing, there will be no need to transfer money from account to account just to meet collateralization requirements. The risk of losing money to bank failure will be cured and the risk of accounting errors occurring will be significantly diminished. The Committee further recommends that the transfers made in fiscal year 2011 be investigated by the Attorney General to determine if funds have been misappropriated by matching up the transfers to the bank statements and accounting records.

The Treasurer has moved Minerals Council funds without the knowledge or authorization of the members of the Minerals Council leaving C-395 funds temporarily outside the control of the Minerals Council.

The Treasurer moved money out of two accounts of the Minerals Council held at FNBP to reduce the total Osage Nation deposits at FNBP in order to keep the deposit total under the collateralization limit of two million dollars (\$2,000,000). (Transcr. of W. Kemble at P. 101, Lns. 20-25; at P. 102, Lns. 1-18; and at P. 116, Lns. 15-19) Those funds were then deposited in another bank in Pawhuska that held mainly federal funds of the Osage Nation. The C-395 account is a fund for the administrative use of the Minerals Council and the Oil and Gas Summit account is simply to fund the costs associated with the annual Oil and Gas Summit organized by the Osage Minerals Council. The Treasurer is a signatory on the C-395 account along with Mineral Councilwoman Cynthia Boone and Mineral Councilmen Myron Red Eagle and Melvin Core.²² The business account agreement states that withdrawal from this account requires two (2) signatures. However, the Treasurer was allowed to transfer funds out of the C-395 account without a second authorization from a representative of the Minerals Council.

The Oil and Gas Summit account has signatories John D. Red Eagle, Principal Chief, Scott N. Bighorse, Assistant Chief, and William Kemble, Treasurer. No members of the Minerals Council are listed as signatories.²³ This account requires two (2) signatures to withdrawal funds.

It is not clear from the documentation or the testimony as to how FNBP allowed these funds to be withdrawn when the withdrawal requirements were not met. On both the C-395 fund and Oil and Gas Summit fund, the Treasurer was allowed to transfer funds without a second signature, as the

²² See First National Bank of Pawhuska business account agreement for account titled OTC-Osage Tribal Budget C395.

²³ See First National Bank of Pawhuska business account agreement for account titled ON Oil Summit.

account agreements require. This Committee recommends that further 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.

The Treasurer has failed to perform his duty to submit quarterly reports of the financial status of the Nation to the Osage Nation Congress; and he has failed to perform his duty to publish quarterly executive summaries of monthly financial statements in the Osage News within forty-five (45) days of the end of each fiscal quarter.

The Treasurer has the duty to provide quarterly reports to the Osage Nation Congress on the financial status of the Nation.²⁴ To date, the Osage Nation Congress has not received any quarterly reports for fiscal year 2011. Mr. Kemble stated in testimony that the reason he has not provided the reports is that the books have not been closed, and therefore he is not sure of the accuracy of the reports. Mr. Kemble is required to report on the financial status of the Nation, and those reports should include any explanation that he deems necessary to explain discrepancies in the accounting method used to determine that status. He is not exempted from complying with the law simply because he believes the accounting to be inaccurate. The Treasurer should report the inaccuracy, explain the reason for the inaccuracy and the steps he intends to take to address the inaccuracy. The Treasurer also has a duty to publish quarterly executive summaries of the monthly financial statements of the Nation in the Osage News within forty-five (45) days after the end of each fiscal quarter. Mr. Kemble has failed to put any quarterly report in the Osage News since he took office in 2010. (Transcr. of W. Kemble at P. 202, Lns. 6-15) This is a direct violation of the Treasurer's duties under the Treasury Law, ONCA 06-02 as amended.

The Committee recommends that the Treasurer immediately begin complying with his duty to report to the Osage Nation Congress and the Osage News. The Treasurer should further be required to submit the quarterly reports for the quarters that he has missed in fiscal year 2011.

CONCLUSION

The Treasurer, William Kemble, must make a significant effort to become current on Osage law, specifically those laws that directly affect the Treasury such as appropriation restrictions and correct processes for implementing new procedures. Mr. Kemble must stay abreast of United States laws that change banking laws and regulations such as the Dodd-Frank Wall Street Reform and Consumer Protection Act. Mr. Kemble cannot wait for bank personnel to call him with financial law updates, as he stated in testimony, because it could put Osage Nation funds at risk for extended periods of time. (Transcr. of W. Kemble at P. 134, Lns. 5-14; and at P. 138, Lns. 8-21) The Treasurer must monitor Tribal, State and Federal laws affecting the Osage Treasury and the banking institutions utilized by the Treasury. The Treasurer

²⁴ ONCA 06-02 as amended, Section 3-108(A).

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.