

TN COMMISSION OF INDIAN AFFAIRS
Quarterly meeting
Saturday, 29 March 2008, 10am
Nashville, TDOT Building – Centennial Parkway

MINUTES

present: Shelley Allen, vice chair, tom kunesh, secretary, James Meeks, Val Ohle, Jimmie Thigpen (5/6)
Mark James, TDEC legal counsel

I. CALL TO ORDER

10.42

James Meeks - Point of Order: Is this a legal meeting? re. TCA 4-34-105(c) Meeting notice

Did secretary fail to comply with state law re. meeting notice, or are there no NA organizations in TN?

Allen - emails sent 13 & 15 March, 19 March - notice was met.

kunesh - provided all meeting information by website and by email to the one and only group that requested it: the "Chikamaka Cherokee", of which Meeks is "Vice Chief"; and to contact Charles Lawson who receives email notices. Commission has no budget for printing, envelopes and postage.

Mark James - Email is not considered US mail. But the potential issue is failure to receive some kind of constructive notice, ... if someone wants to sue because of action taken at a meeting and failure of proper/official notification.

Allen - ruled that ten-day notice has been taken care of, and that there were adequate sources of notice.

Meeks - appealed ruling of the acting chair.

James - one way to address the budget issue is to request Self-Addressed Stamped Envelopes (SASE) from any party wishing to receive hard-copy notice.

Meeks - did not receive notice before the 20th. Repeated appeal the decision of the chair.

Appeal failed without a second.

Meeks - Point of order: Minutes of commission meetings - as of 29 March, the minutes of several past meetings have not been posted on web; explanation requested.

kunesh - Minutes were postponed and not approved; will be posted in 10 days.

Please submit requests for information before meetings

Allen - We are within 100 days of 29 December and within 10 days of date kunesh submits past minutes.

Meeks - When did the Commission authorize "please table HB3299" email to legislators? ; appears to be a violation of state sunshine law.

Allen - it is within the Commission's statutory authority of "review" of legislative proposals; was told bill had amendments - Commission hasn't seen amendments.

Is not pro or con bill - wanted chance to review amendments prior to bill being put on calendar; doesn't want bill going to legislature without first knowing what the bill/amendments consisted of. Vaughn said he would give commission members 10-day notice prior to introduction on floor.

parliamentarian - not a point of order, ie, violation of meeting rules,

Meeks - violation of state law.

kunesh - not a point of order.

Meeks - point of order - ROR - breach of rules

kunesh - point of order applies to current meeting, not past actions.

parliamentarian - question applies to legality of previous action, not a procedure of this meeting.
chair should rule out of order
Allen - out of order

12.14

Roll Jimmie Thigpen, Shelley Allen, Val Ohle, James Meeks, tom kunesh (5/7)
absent: Jeanie Walkingstick King, Knoxville (work)
resignation: David Teat, Nashville

B. Review and approval of agenda

Ohle - add Motion of censure to New Business

address issues of a commission, a reprimand of Commissioner Meeks

Meeks - no authority to censure or remove.

approved: 4-1 to add

Meeks to parliamentarian - Is it appropriate/legal to discuss inclusion of an agenda item prior to a meeting? Doesn't think parliamentarian can appropriately address the question. (this is in regards to an agenda item proposed by Meeks that the secretary did not include on the agenda due to lack of information about the proposed item and its meaning.)

Allen - secretary & chair communicate regarding administrative responsibilities.

parliamentarian - body's decision how an item is put on the agenda or not

James - practical considerations ... time, place, facilities, nature of your presentation ...
left off the agenda that was published

Meeks - Was compilation of Standing Rules actually approved? Didn't think so.

kunesh - Yes, as described in the last meeting's minutes: unanimous. They should be up on website.

Motion to adopt agenda, approved 4-1.

A. Welcome and Introductions

New Commissioner: Jimmie Thigpen, West Tennessee

Parliamentarian: Fred Polacek

TDEC General Counsel: Mark James

C. Secretary's report

(1) December meeting minutes - approved as amended, unanimous.

Rec'd one letter requesting meeting notice by USPS mail (hardcopy)

Get all 2007 minutes up by 10 April 2008, unanimous.

(2) Treasurer's report

All present 5 commissioners have business cards

Rec'd \$100 invoice, 2008 GIIC State Membership Dues # 2008-09, March 2008

Knight Allen - TNCIA sponsored GIIC Conference held in Nashville 1986 (or 1988)

"Year of the Indian" in Tennessee, a way for TN to be in the national indian loop

"It's a good thing for the state to be involved in national issues."

Motion to approve treasurer's report - approved, unanimous.

D. Commissioners' written reports

Ohle - read report

Thigpen - read report

13.14 break

13.30

Meeks - read report and read 7 March 2008 letter from Barbara Clark, atty for "UELN".

kunesh - read report

Allen - oral report: meeting in West TN;
on the legislative 'hill' with kunesh & Jimmie Thigpen on 30 January;
with Thigpen & wife in Kateri Tekawitha Conference - Catholic Church spiritual retreat

13.46

II. OLD BUSINESS

- A. Resolution supporting the TNNAC democratic election process for nominees and repudiation of private lobbying efforts advocating specific nominee change. (kunesh)(tabled from 29dec07)
**move to june meeting - unanimous.
- B. That all emails between 2 or more sitting Commissioners wherein there was review, deliberation of decisions or assessment of information in lieu of a called committee meeting or regular meeting of the Commission be placed into the Minutes/Records of the Tennessee Commission of Indian. With this inclusion all said emails should/would be posted to the website of the Tennessee Commission of Indian Affairs for review by the public. (Meeks)
**move to june meeting - unanimous

13.49 recess for lunch

14.21 back to order

- C. On officers' election, transition and duties. (kunesh) Motion to approve, unanimous. Since Commission is unfunded, will now send meeting notices by email, and any requests for a hard copy will require Self-Addressed Stamped Envelope (SASE) for all USPS requests - unanimous.

Motion that the Commission set an automatic reschedule date for a cancelled meeting, to be set for 21 days in the future unless otherwise specified by the Commission for some other date.
Approved - unanimous.

- D. Project reports – Tourism Map, CD, Research Initiative (kunesh)
14.35 Action suspended, will start up again when governor signs bill to extend commission to 2009.

- 14.40 Ohle, on research initiative
submitted draft "Report to Governor" March 2008 by Marion Orrick/Letha
quantitative study
Motion to accept "Report to Governor" format
or "Report to Community", get input, then to community, then to governor
or "Report to Governor", then community input, then back to gov & legislature
Approved report to community, with 3 Grand Division public hearings -
this summer, before fall quarterly meeting, then to governor - approved - unanimous.
Motion to apply for grant to do qualitative survey, compensation for Marion Orrick, deadline, ...
send final copies to all commissioners for review and comnded, approval of chair/acting chair
& Ohle, and authorizes Ohle & chair/acting chair to for Commission; grant funds to be held
and distributed by TDEC. Approved - unanimous.

Mark James - The Commission can adopt a resolution to meet by teleconference,
have to vote approval of a teleconference at a prior meeting .
In june will have to respond to a sunset questionnaire,
can easily respond to a questionnaire by telephone.
procurement - Ohle - volunteers to find out about acquiring teleconferencing equipment.

15.20

III. NEW BUSINESS

A. Status of repeal of Rule 0785-1

Mark James - Commission approved on 29dec07, was reviewed by AG, returned to TDEC on 22 feb; filed on 24feb08 with Secretary of State; 75 days ... ±9 may 2008 repeal will be enacted.

15.24

B. Report to Legislative Review Committee/s and status of legislation to extend Commission

- (1) SB3450/HB - extends Commission to 2009: recommend approval, as introduced
Approved - unanimous
- (2) SB2477/HB - recommend approval, as amended - extends Commission to 2009,
and recommend Gov. sign. Approved - unanimous.
- (3) SB3123/HB3299 - motion to disapprove as introduced, & protest that, to date, the
Commission has not been provided any amendments and promised 10-days advance notice, and
oppose any version of this bill that does have the support of the Commission of Indian Affairs.

James: TDEC, Division of Archaeology, Office of General Counsel, Attorney General, all have major problems with proposal [SB3123/HB3299], and new recognition criteria would have major federal statutory conflict, "we think this is unconstitutional".

Ohle - We are held to the state Sunshine law, to be transparent in our operations;
this proposal is not transparent - amendments have not been presented.

Allen - heard criticism about the letter she signed earlier this week.

We are simply asking to see the proposal, in black & white, before we approve it.

kunesh - bills about Indian Affairs in Tennessee need to be presented to the Commission of Indian Affairs, not run around it. This is legislation by ambush. There's no way that the Commission should approve anything sight unseen.

Ohle - explanation of 2 february meeting w/Vaughn:

can't support bill as written, can't support amendments as unseen.

Meeks - didn't bring it [SB3123/HB3299] to Commission for 2 reasons:

- believed Commission had removed itself from the recognition business;
- didn't know meeting was happening today.

Thigpen - when TNCIA voted to repeal Rule 0785-1,
what did that do to the Commission on recognition?

Mark James - abiding by request of Rules Cte, asked to "reconsider" the rule [0785-1], to do away with recognition criteria as problematic. We (TDEC/OGC) took that to mean repeal. Didn't want a negative consideration of the Commission due to sunset review. The repeal process was set in quick motion, for a chance of surviving sunset review. The statute has not been repealed - it's in the process of being repealed.

Amending the Commission's statute [to eliminate Commission responsibility for recognition] is done by the legislature - please reconcile the statute with the rule. Commission avoided sanctions by repeal of rule 0785-1.

Meeks - based on the moratorium, are we out of the recognition business?

James - yes.

Meeks - basically under a moratorium at this time to do anything on recognition?

James - yes, and yes. We do anything on recognition at our own peril

kunesh - hate to see an organization taking advantage of the TNCIA's moratorium.

Vote on motion to disapprove: Thigpen - no, kunesh - yes, Ohle - yes, Meeks - no, Allen - no; motion failed.

16.05 Reece - question to Mark James since James has to leave. Answer:
When the Commission repealed 0785-1, it repealed the rule, not statute §6 (TCA 4-34-102).
re. TCA 4-5-226 - further sanctions?
Commission - refrain from rulemaking for, say, 24 months?

Commission has to talk about postage. ... TDEC is involved in the maintenance of
the physical records of the Commission. Appropriations?

16.16 5-minute break

Commission "ask[ed] for specific Commission armed security" at 29 december meeting,
security cost charged to TDEC.

16.27 Mark James left

Ohle - re. SB3123/HB3299: we need to comment on it per TCA 4-34-103.9.

Allen - Motion that the Commission neither approves nor disapproves of the bill
as originally introduced but notes that the lack of information on amendments
prohibits us from fully reviewing and commenting on this bill.

kunesh - the bill is bad, this motion is bad.

Ohle - friendly amendment - commission disapproves of bill as written but ...

Allen - rejects friendly amendment

Vote on motion: Thigpen - yes, kunesh - no, Ohle - no, Meeks - yes, Allen - yes: approved 3-2.

C. Officer elections: chairperson (was Ms Van Lynch, West TN)

kunesh - motion to table until appoinment of Nashville commissioner.

Allen, vice chair - wants it finalized today.

Motion dies for lack of second.

Nominations: Meeks nominated Allen, Allen declined.

Allen nominated Ohle. Vote: Shelley, Val, Jimmie - yes. Valerie Ohle, elected chair.

Ohle asks Allen to continue as chair at this meeting, Allen agreed.

D. Annual Report review

kunesh - not ready, not due til june. TNCIA's annual year - calendar or state fiscal year?

tabled - approved 4-0-1

E. Setting of meeting dates and places (Allen)

fall - problem with fall meeting in Knoxville, which is start of UT football season.

wants to change rotation

kunesh - weather station says december and march are the most problematic weather months

Meeks - native groups have ceremonies on the first saturdays

Motion to set future meeting dates, approved - unanimous:

21 june - Knoxville

13 september - Chattanooga

8 november - Memphis

?21 february - Nashville?

F. Tribal Task Force (Ohle)

16.58

Meeks - suggests partnering with local historical/genealogical societies

kunesh - who will do this? Allen - Western half, Ohle - Eastern half.

17.12 Approved, unanimous.

G. Agenda Protocol (Ohle) - tabled til june.

H. Standing Committees vs. Regional Coalitions (Ohle) - tabled 4-1.

I. Recognition for departing Commissioners (Allen) - tabled til june.

J. Citizens' Committee of Historic and Other Federally Recognized Nation (Ohle)
kunesh - with Ohle to make proposal for State & Unrecognized indians at next meeting
Meeks - are committees bound by state Sunshine Law? - public notice, public meeting
**table til june

K. Action Plan for TCIA (Ohle): need to do serious strategic planning
North Carolina has a 5-year strategic plan - Meeks will get NC's plan for review.
5-year strategic planning - agenda item for june - unanimous.

17.38

L. Code of Ethics/Pledge (Ohle & Meeks) - table to june 4-0-1.

M. Motion to censure Commissioner Meeks for comments in correspondence of
"Confederation" materials, for comments hindering these meetings. (Ohle)
inappropriate as commissioner, cast Commission in a negative light,
given the appearance of division, disapproval of actions
seconded by Thigpen for discussion purposes.
problems: 1. derogatory comments in "Confederation" material,
2. statements made to Subcommittee that are factually untrue,
3. 2nd meeting of nitpickiness
4. refusal to disclose agenda items
5. intent to keep non-Confederation commissioners in the dark
time to say "enough" - don't do it again
Jimmie-abstain, tom-abstain, Val=yes, James=no, Shelley=no; motion failed.

IV. ORGANIZATIONAL REPORTS

A. ACTIA - Lance Davis, newly elected chair, McCaleb - vc, Robbie Cody - secy
strong letter of support for commission, urge commission to build consensus
wants to develop brochures on ACTIA, TNCA, NAGPRA
and new fundraising efforts - t-shirts, vanity plates; Thomas Udall Scholarship
next meeting: 3 May at Cumberland U

B. TNNAC next meeting at MTSU
names submitted for Nashville position: Dale Mitchell, Charles Lawson, Bill Wells

V. CLOSING

A. Announcements

- (1) Next Commission meeting proposed, 21 June, Knoxville
- (2) Other future meeting dates and places (13 September, Chattanooga)

B. Public comments (4 mins. per person)

Alice Henry - FarAway Cherokee 501(c)3 - simply a business entity
not the same as Tanasi Council of the Far Away Cherokee - tribal group
Lee Yambree

TN Cherokees born & raised in TN

NAIA Memphis has not existed since 1997 - officially dissolved in 1997: intertribal doesn't work
we have more people from out of the state than we have our own

18.23

Reece re. HB3123 - staunch supporter for state recognition, could be a stronger bill
state tribal recognition doesn't hurt federally-recognized indians, it's an alternative method.
in defense of the confederation, its bill wasn't presented until after the Commission repealed
criteria; the Confederation didn't go around the Commission;
let's quit saying these people went around the Commission

Ohle - understood, but point is being missed.

while Commission doesn't have rule, it still has statutory authority

TNCIA been denied the opportunity to review legislation

not proper flow of communication

Reece - come together and work together

kunesh - will continue to dispute false claims of Confederation

18.33 Lee Embry - technicality, yes, you did give up recognition
yes, we did write a law, yes, we did offer tribal recognition

18.38 closing prayer

attendees: Ruth Knight Allen, Mr Henry, Lee Embree, Alice Henry, Ramona Reece, Billy Joe Nuckles, Mr
Reece, Charles Lawson, Donna Smith, Lance Davis, (10)

Minutes submitted by tom kunesh.