

Tribal Council Office
Jennifer Bailey - Coordinator
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Special Tribal Council Meeting called by the Legislature
for Saturday, December 15th, 2018.

Agenda Item:

One item was on the on agenda for the vote to remove Jennifer Plummer as the Tribal Council Coordinator and appoint a new Tribal Council Coordinator to from the pool of candidates if Jennifer Plummer is successfully voted out.

No signed resolution was available in the Tribal Council Office for the appointment of the new Tribal Council Coordinator voted in on 12-15-2018

PUBLIC NOTICE & AGENDA

TO: ALL CHEYENNE AND ARAPAHO TRIBAL MEMBERS

Special Tribal Council Meeting

Saturday December 15th, 2018 at 10:00 am

Concho Community Hall – Concho, OK

In accordance with the Cheyenne & Arapaho Tribes' Constitution, pursuant to Article V. Sec. 3 (b) Special Meetings of the Tribal Council may be called by five members of the Legislature. Resolutions were accepted by the Tribal Council Office from the Legislature to call a Tribal Council Meeting for Saturday December 15th, 2018. The Special Tribal Council meeting shall be held at the Concho Community Building, Concho, OK. The agenda of the Special Tribal Council Meeting is listed below.

The purpose of this meeting shall be to vote on the following resolutions:

- 1. Vote to remove Jennifer Plummer as the Tribal Council Coordinator and to appoint a new Tribal Council Coordinator from the pool of candidates if Jennifer Plummer is successfully voted out.**

Only two applicants submitted their name for Tribal Council Coordinator: Jennifer Plummer & Michelle Bigfoot.

Light Breakfast and lunch will be served for the meeting. Any resolution is available to the public.

Office of the Tribal Council:

Jennifer Plummer

Tribal Council Coordinator

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SEVENTH LEGISLATURE
OF THE
CHEYENNE AND ARAPAHO TRIBES
Special Meeting of the Tribal Council
10:00 a.m., on December 15, 2018
Concho, OK

RESOLUTION: A Resolution to call for a Special Meeting of the Tribal Council, at 10:00 a.m., on Saturday, December 15, 2018 at the Concho Community Hall, Concho, Oklahoma.

RESOLUTION NO: 7L-SMTC-2018-1107-001
DATE INTRODUCED: November 6, 2018
SPONSOR: Patrick Spottedwolf, A3 District
CO-SPONSOR: Burl Buffalomeat, C1 District

SUBJECT: A Resolution to call for a Special Meeting of the Tribal Council, at 10:00 a.m., on Saturday, December 15, 2018 at the Concho Community Hall, Concho, Oklahoma; and

WHEREAS: The Cheyenne and Arapaho Tribes are duly recognized by the United States Secretary of the Interior as a self-governing, Sovereign Nation, that is a federally recognized Indian Tribe with all rights, privileges, and powers attended thereto as a sovereign government, and organized in accordance with Title 25 of the United States Code, Section 450, the "Indian Self-Determination and Education Assistance Act," and Article XVII of the Tribe's Constitution and By-Laws and Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), under an amended Constitution ratified on April, 2006 and approved by the Secretary of Interior on May 17, 2006; and

WHEREAS: Article V, Section 3, subsection (b) of the Constitution grants the Legislature the power to call for a Special Meeting of the Tribal Council, and reads in part, "Special Meetings of the Tribal Council may be called by five (5) members of the Legislature;" and

WHEREAS: Article V, Section 3, subsection (b) of the Constitution further reads in part, "All requests for a Special Meeting of the Tribal Council shall be submitted to the Coordinator of the Office of the Tribal Council;" and

WHEREAS: Article V, Section 4, subsection (c) of the Constitution reads in part, "The Coordinator shall accept proposed Resolutions at least thirty (30) days before each Special Meeting of the Tribal Council;" and

WHEREAS: Article V, Section 4, subsection (c) of the Constitution further reads in part, "The Coordinator shall publish all proposed Resolutions which are submitted at least thirty days before the meeting, and all such Resolutions shall be placed on the agenda of the Tribal Council Meeting."

WHEREAS: Article V, Section 3, subsection (b) of the Constitution reads in part, "The purpose of the Special Meeting shall be indicated in the request for the Special Meeting and no other business shall be conducted at the Special Meeting;" and

WHEREAS: Article V, Section 5, subsection (a) of the Constitution reads in part, "A Coordinator for the Office of the Tribal Council shall be selected by the Tribal Council at the Annual Meeting of the Tribal Council, or at a Special Meeting of the Tribal Council as needed;" and

WHEREAS: Article V, Section 5, subsection (a) of the Constitution reads in part, "Members of the Tribes interested in serving in the position of the Coordinator shall submit an application at least thirty (30) days prior to the Tribal Council Meeting. And all applications for Coordinator shall be published at least thirty (30) days prior to the Tribal Council Meeting;" and

WHEREAS: The current Tribal Council Coordinator, Jennifer Plummer has failed in her ability to perform her Constitutional Duties pursuant to Section 2 of the 2008 Terms and Conditions of Employment for the Tribal Council Coordinator (Resolution Number 100408ATC-001):

WHEREAS: Section 2, of the 2008 Terms and Conditions of Employment for the Tribal Council Coordinator (Resolution Number 100408ATC-001) reads, "Removal. Removal only by action of the Tribal Council;" and

WHEREAS: The purpose of the Special Meeting of the Tribal Council shall be for the Tribal Council from the floor: (1) Vote to remove Jennifer Plummer, as the Tribal Council Coordinator who has failed in her ability to perform her Constitutional Duties; and (2) If, Jennifer Plummer is successfully voted out of office, then appoint a new Tribal Council Coordinator from the pool of applicants to fulfill the duties of the Office of Tribal Council Coordinator, subject to an ability to perform their Constitutional duties Annually; and

NOW, THEREFORE BE IT RESOLVED, that the undersigned members of the Seventh Legislature of the Cheyenne & Arapaho Tribes calls for a Special Meeting of the Tribal Council at 10:00 a.m., on Saturday, December 15, 2018 at the Concho Community Hall, Concho, Oklahoma; and the purpose of the Special Meeting shall be for the Tribal Council from the floor: (1) Vote to remove Jennifer Plummer, as the Tribal Council Coordinator who has failed in her ability to perform her Constitutional Duties; and (2) If, Jennifer Plummer is successfully voted out of office, then appoint a new Tribal Council Coordinator from the pool of applicants to fulfill the duties of the Office of Tribal Council Coordinator, subject to an ability to perform their Constitutional duties Annually.

Billie Sutton, Legislator, A1 District

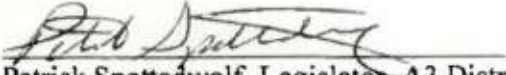


Burl Buffalomeat, Legislator, C1 District

Kendrick Sleeper, Legislator, A2 District




George Woods, Legislator, C2 District



Patrick Spottedwolf, Legislator, A3 District



Sonny Redshin, Legislator, C3 District



Winslow Sankey, Legislator, A4 District

Byron Byrd, Legislator, C4 District

ACTING CHIEF JUSTICE BOLES delivered the Order of the Court.

I.

Following a period during which the Tribal Council Branch was effectively controlled by former Governor Janice Boswell and her political allies, Pete Salinas was elected Tribal Council Coordinator for a two-year term at the October 4, 2014 Annual Meeting.¹ Invoking the Legislature's Article V, Section 3(b) "Special Meeting" power, however, on October 23, 2014, six claimants to membership on the Fifth Legislature² called for a December 6, 2014 Special Tribal Council Meeting to remove Mr. Salinas as Tribal Council Coordinator. A majority of the persons present at that meeting apparently voted to remove Mr. Salinas from office.

Appellant Plummer [now Bailey] was elected Tribal Council Coordinator for a two-year term at the next [*i.e.*, at the October 3, 2015] Annual Tribal Council Meeting.

II.

The Tribal Council Branch re-elected Appellant Plummer [now Bailey] Tribal Council Coordinator at the October 7, 2017 Annual Meeting. Unlike her earlier appointment, the Tribal Council Resolution that reappointed her on October 7, 2017 did not state that she was being reappointed for a two-year term, but she nevertheless claimed a two-year term based primarily on a 2008 Tribal Council Resolution³ and subsequent Tribal Council practice. In consequence, she did not list "selection of Tribal Council Coordinator" on the Agenda for the October 6, 2018 Annual Tribal Council Meeting.

Against that backdrop, at its November 10, 2018 Regular Session, five members of the Seventh Legislature [who this Court has recognized as such in other cases] asserted Article V, Section 3(b) power to convene a December 15, 2018 Special Tribal Council Meeting to remove Appellant Plummer [now Bailey] from office (and if she were voted out of office, to "then appoint a new Tribal Council Coordinator from the pool of applicants").⁴

¹ See T.C. Res. No. 100414ATC-001 (Oct. 4, 2014).

² Two competing groups of tribal citizens were claiming to constitute the Fifth Legislature at that time.

³ T.C. Res. No. 100408ATC-001, at 2-3 (October 4, 2008).

⁴ Res. No. 7L-SMTC-2018-1107-001, at 2 (7th Leg., Nov. 10, 2018).

On November 15, 2018, Appellant Plummer [now Bailey] sought declaratory and injunctive relief in the Trial Court, on both constitutional (including “encroachment”)⁵ and non-constitutional⁶ grounds. The Seventh Legislature replied on November 27, 2018, and the Trial Court entered the appealed Order the next day.

In material part, that Order reasoned that the Trial Court was

not confident that the Petitioner could prevail on its claim on the merits . . . [because] the claim is based on the adoption by the Tribal Council of policies which include a two year term for the Coordinator Article V, Section 5 of the Tribes’ Constitution provides that the Coordinator SHALL be selected by the Tribal Council at the Annual Meeting of the Tribal Council. This requirement of an annual selection of someone to be Coordinator cannot be overridden by any policy adopted by the Tribal Council. The requirement would require an amendment to the Constitution changing the language of Article V, Section 5. The Petitioner’s request for . . . an emergency restraining order or injunction is denied.

Proceeding *pro se*, Appellant Plummer [now Bailey] filed appellate documents (with attachments) on November 29 and December 13, 2018.

This Court did not intervene to prohibit the scheduled December 15, 2018 Special Meeting. A majority of the persons present at that meeting voted to remove Appellant Plummer [now Bailey] as Tribal Council Coordinator, and to replace her with Karen Michelle Bigfoot.

III.

Given the need for this Court to address other pressing matters before conducting further proceedings in this case, it did not enter any Order herein before the October 5, 2019 Annual Tribal Council Meeting, at which Ms. Bigfoot was apparently selected Tribal Council Coordinator without legal challenge. This case then went dormant.

⁵ See, e.g., Chey. & Arap. Const. art. II, Section 3 (“No official of any branch of Government shall exercise any power granted in this Constitution or properly delegated by law to any other branch of Government except as expressly directed or permitted by this Constitution.”); *id.* art. V, Section 2(d) (“The Tribal Council shall have the power to establish its own rules of order and procedure.”); *id.* art. V, Section 5(a) (“A Coordinator for the Office of the Tribal Council shall be selected by the Tribal Council at the Annual Meeting of the Tribal Council or at a Special Meeting of the Tribal Council as needed.”); *id.* art. V, Section 5(b) (“The [Tribal Council] Coordinator shall serve in accordance with terms and conditions established by the Tribal Council.”).

⁶ See, e.g., T.C. Res. No. 072818STC-001 (July 28, 2018).

But with Appellant Plummer [now Bailey] having been elected Tribal Council Coordinator once again at the October 2, 2021 Annual Meeting, although in a different posture, assuming this case is not simply moot, if only prospectively, it could once again be relevant.⁷

We fully understand that the primary thrust of Appellant's constitutional argument is that pursuant, *inter alia*, to the constitutional provisions from which we quote in footnote 5 above, even where the Legislature acts pursuant to its *general* Article V, Section 3(b) power to call Special Tribal Council Meetings, the provisions quoted in footnote 5, and broader Separation-of-Powers principles, forbid the Legislative Branch from encroaching on the Tribal Council's Branch's Coordinator-selection powers by calling a Special Meeting with the *specific* purpose of replacing a lawfully seated Coordinator.

But unless the "capable of repetition, yet evading review" exception to the "mootness" doctrine (or some other "mootness exception") applies, and if this case is simply moot, we may not now address that question (on which this Court has yet to rule) in this case.

Even given the theoretical possibility that a plaintiff might be able to obtain extraordinary mandamus and/or prohibition relief in some circumstances, in this unusual posture we are reluctant to dismiss this case as moot without giving Appellant the opportunity to at least argue that materially similar facts could happen to a Tribal Council Coordinator in the future, and that he or she might lack the practical ability to secure meaningful and timely judicial relief.

We therefore authorize Appellant (if she chooses) to argue to this Court that irrespective of "ordinary" mootness principles, under "capable of repetition" (or other) mootness exceptions, it should decide this case (prospectively) on the merits. Since all of the Justices of this Court are familiar with our own "mootness" and/or "mootness exceptions" caselaw, no citations to that caselaw will be necessary. Because the attachments to the filings of both parties are numerous and speak for themselves, we will accept no additional attachments at this stage. Aware as we are that Appellant proceeded *pro se* at earlier stages [and wishing as we do to avoid collateral attorney-compensation issues⁸ at this stage], a simple and straightforward explanation of why Appellant believes (if she does) that this case is not moot will suffice for present purposes.

If Appellant wishes to attempt that task, no more than ten pages (at the most) should be necessary. If she chooses to attempt it, her filing deadline will be at 4:00 p.m. on Monday, November 22. If she chooses not to file, we will dismiss this appeal as moot, but if she files by that date, Appellee Legislature may respond [with the same prohibition on attachments and the same page limitation] by 4:00 p.m. on Tuesday, November 30, 2021.

⁷ If one or more of this Court's exceptions to the "mootness" doctrine applies to the facts of this case, then Appellant Plummer [now Bailey] would "step into her own [2018] shoes" as the Appellant, and the Eighth Legislature would "step into the shoes" of the Seventh Legislature as the Appellee.

⁸ *But cf., e.g., The Budget Stalemate Case [In re Executive Authority]*, No. SC-2007-02, slip op. at 22-23, 11 Okla. Trib. 927, 962-63, 2009 WL 10271473 (Chey. & Arap. S.Ct. Dec. 30, 2009).

We assure both Appellant and Appellee that all Justices have carefully reviewed the filings, all of their attachments, and all of their legal arguments. We therefore direct the parties to confine the filings that we authorize today solely to "mootness" and "mootness exceptions."

IT IS SO ORDERED.

Enid K. Boles

Acting Chief Justice Enid K. Boles

Dennis W. Arrow

Associate Justice Dennis W. Arrow

John J. Kocher

Associate Justice John J. Kocher

Associate Justice Ryland L. Rivas

Associate Justice Lindsay G. Robertson