

IN THE JUDICIAL APPEALS TRIBUNAL
OF THE CHEROKEE NATION

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CHEROKEE NATION
JUDICIAL APPEALS TRIBUNAL

PAT RAGSDALE,

Plaintiff,

vs.

CHEROKEE NATION
ELECTION COMMISSION,

Defendant.

Case No. JAT-98-19-K

FOR THE PLAINTIFF:

Julian K. Fite
HC 61 Box 273-1
Tahlequah, OK 74644

FOR THE DEFENDANT:

Christine P. Folsom-Smith
CL Box 6122
Coweta, OK 74429

BEFORE:

Dwight W. Birdwell, Chief Justice

ORDER

An Order was entered in the above-captioned cause on December 28th, 1998. In that Order, the Court held, among other things, that the correct construction of 26 CNCA § 43 (A) is as follows:

No adult person, corporation or other legal entity shall contribute more than five hundred dollars (\$500) in cash to any one candidate during an election period, or more than five-thousand (\$5,000) in the aggregate, including cash contributions, for any one candidate seeking office during an election period.

On January 18th, 1999, the Plaintiff filed a "Request For Clarification" of the Court's Order. Essentially, the Plaintiff is asking the Court to construe the word "cash", as used in

26 CNCA § 43 (A), very narrowly to mean only "currency of the United States".

The Defendant filed its reply to Plaintiff's Request For Clarification on January 25, 1999.

Issue

The issue raised in Plaintiff's Request For Clarification is as follows. What is the meaning of the word "cash" as used in 26 CNCA § 43 (A) ?

Discussion

If the Court were to accept the Plaintiff's very narrow definition of cash, such things as personal or business checks, Cashier's checks, money orders, etc. would not be considered to be "cash" as used in 26 CNCA § 43 (A).

The general rule in interpreting the intent of the Council of the Cherokee Nation ("Council"), as the intent is expressed in the Cherokee Code, is that the words used by the Council in the Code are presumed to have been used in their plain or ordinary meaning, within the context in which they were used, unless it is clear that the words have acquired a technical or special legal meaning.¹

The Council did not provide a special or technical definition to the word "cash" in Title 26.² Therefore, it is reasonable to presume that the Council intended the meaning of the word "cash" to be the same as its ordinary and plain meaning. In Black's Law Dictionary, p. 216 (6th Ed.1990), the word "cash" is defined as,

Money or the equivalent; usually ready money. Currency and coins,

¹ *Courts should be slow to impart any other than their commonly understood meaning to terms employed in the enactment of a statute, and it is the policy of the courts to avoid giving statutory phraseology a new, curious or peculiar, distorted, hidden, unusual, unnatural, strained or forced, artificial, refined, metaphysical, or subtile meaning. To the contrary, it is a general rule of statutory construction that words of a statute will be interpreted in their ordinary acceptance and significance, and the meaning commonly attributed to them. The rule is that such words are to be given their natural, received, popular, everyday, approved, and recognized meaning. The intention of the legislature to use statutory phraseology in such manner has been presumed.*

The rule in favor of the construction of statutory terminology in accordance with the commonly accepted meaning prevails where the words have not acquired a technical or special legal meaning, and where there is no reason for a contrary construction, that is, where a different meaning is not apparent or obvious, or definitely indicated, or required by the context. Rather than using terms in their everyday sense, the law uses familiar legal expressions in their familiar legal sense. 73 Am Jur 2d, Statutes, § 206.[citations omitted].

² Legislative Act No. 7-97.

negotiable checks and balances in bank accounts. That which circulates as money.

In Webster's New Collegiate Dictionary ©1980, p.170 , one of the definitions of "cash", appropriate hereto, is,

1: ready money, 2: money or its equivalent paid promptly after purchasing.

The Council could have chosen to use the word "currency"³, or the term "legal tender"⁴ instead of "cash", but it did not. In reality, the narrow definition of "cash," as urged by the Plaintiff, would allow § 43 (A) to be made an absurdity. For example, under the Plaintiff's definition, a contributor could give \$500.00 in currency (such as five \$100 Federal reserve notes) to a candidate, and at the same time give the candidate a Cashier's check payable to the candidate in the amount of \$4,500.00, and the contributor would be within Cherokee law. If the Council would have intended such a result, the Council would not have stated the limits in § 43 (A) as *five hundred dollars (\$500) in cash....five-thousand dollars (\$5,000) in the aggregate...* It is clear from the context of the language of § 43 (A) that the Council intended contributions to candidates to be placed in two categories: cash and non-cash.

Accordingly, the Court finds that the Council intended "cash" to be **MONEY⁵ OR THE EQUIVALENT**. Therefore, while "cash" includes currency and legal tender, it also includes much more. A **non-exclusive, non-exhaustive** list of other items included within the definition of "cash" [within the meaning of § 43 (A)] would be personal checks, business checks, endorsed third party checks, Cashier's checks, money orders, notes, drafts, certificates of deposit, and any other items falling under the definition of negotiable instruments⁶, bonds, all traded securities, deposits into bank or other accounts, the right to make a withdrawal from bank or other accounts⁷, non-recourse loans, annuities and/or assignments of annuities, assignments of rights to income from any source, etc., etc.

³ *Coined money and such banknotes or other paper money as are authorized by law and do in fact circulate from hand to hand as a medium of exchange. Black's Law Dictionary p. 382 (6th Ed. 1990).*

⁴ *United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts. 31 USCA § 5103.*

⁵ *Money is something generally accepted as a medium of exchange, a measure of value, or a means of payment. Webster's New Collegiate Dictionary ©1980, p. 736.*

⁶ As defined in the Uniform Commercial Code, Article 3.

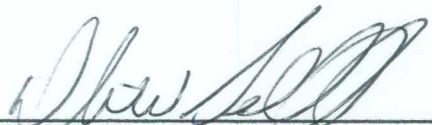
⁷ Prudence dictates that great caution be taken by all candidates in regards to bank accounts.

A "non-cash"(sometimes called an "in kind") contribution is anything that is not a cash contribution. A listing of all possible non-cash type contributions is impossible. However, the defendant correctly listed a few examples of non-cash contributions as being equipment, plane tickets, direct payment of expenditures, loans of vehicles and benefit dinners. ANY OTHERWISE NON-CASH CONTRIBUTION WHICH IS SUBSEQUENTLY CONVERTED INTO CASH, MUST BE TREATED AS "CASH" FOR PURPOSES OF § 43 (A). For example, if a party contributed an airline ticket valued at \$250.00, and the candidate used the ticket, then the contribution would be considered a \$250.00 non-cash contribution. If, however, the candidate did not use the ticket, but instead sold it for cash, or obtained a "refund" in cash from the airline, then the ticket would be treated as a cash contribution to the extent of the amount of cash received from the sale, or refund, of the ticket.

Holding

THEREFORE, THE COURT HEREBY FINDS AND HOLDS that "cash", as used in 26 CNCA § 43 (A), means **MONEY OR THE EQUIVALENT**.

IT IS SO ORDERED THIS 29TH DAY OF JANUARY, 1999.



DWIGHT W. BIRDWELL, Chief Justice
of the Cherokee Nation.