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**TN COMMISSION OF INDIAN AFFAIRS**

*Quarterly meeting*

**Saturday, 25 August 2007, 10am - Knoxville**

Mountain View UMC Gymnasium, 3200 Maryville Pike

**I. CALL TO ORDER**

- A. Words of Inspiration
- B. Welcome and Introductions - Parliamentarian (TBA) - General Counsel
  - Ron Longmire, Maryville, parliamentarian
  - Mark James, TDEC General Counsel

present: 5/7 quorum present  
Van Lynch, West TN, chair  
Kippy Vaughn, East TN, vice chair  
Jeanie Walkingstick King, Knoxville  
tom kunesh, Chattanooga  
David Teat, Nashville

about 30 people attended

Mark James, TDEC General Counsel, raised concerns re. term-duration/2007 expiration date of tom kunesh's appt/commission based on Doris Tate Trevino's original incorrect appointment end date of 30 october 2007. Van Lynch said she rec'd a letter of correction from Gov's office of Boards & Commissions office. Will re-visit this issue later with letter in hand.

**C. Approval of agenda**

David Teat moved to add public comment on agenda item on topic of Repeal of recognition criteria: add comment period - at the beginning of new business, each speaker - 4 minutes; limit total discussion to 30 minutes - if more than 7 speakers, reduce time to 3 minutes. Accepted - unanimous.  
Van Lynch gave notice that she will vote to make or break a tie.  
Agenda approved as amended - unanimous.  
Question asked about existence of sound system (not available).

D. Accept resignation of Ruth Knight Allen

David Teat - As per Roberts Rules of Order, there is no need to accept or reject a member's resignation. The Commission simply acknowledges receipt of the letter of resignation; need to elect new secretary/replacement of position; nominated tom kunesh to fulfill term. Jeanie Walkingstick King seconded, complimented tom for composing questionnaire responses.

Van Lynch - David Teat donated the new meeting tape recorder, needs receipt for contribution. tom kunesh was elected to fulfill remaining term of secretary 4-0-1.

E. Approval of June 9 minutes & treasurer's report and special meeting of July 21

No minutes have been presented, will need to wait until next meeting for review and approval. Van Lynch expressed concern that the law (TCA 4-34-105.d) requires that minutes be posted within 100 days to the website. David noted that notes were taken at the previous meetings by Van and tom and that recordings were made, suggests tom compose minutes from notes & recordings.

Mark James advised that the Commission has just cause - resignation of secretary - not to post approved minutes within 100 days, a note on which should serve as sufficient notice

David Teat moved to place notice on website that Minutes from june & july meetings have not been submitted for approval. Accepted - unanimous.

Accepted deadline of wednesday, 29 august, for use of minutes of previous secretary. tom submitted best estimate of Commission's existing financial balance:

GIIC Membership (1 aug 2007)	(\$100.00)	
business cards DT	(\$ 20.38)	
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	(\$120.38)	328.56
		\$208.18 existing balance

Van Lynch noted that a silent auction is currently taking place on items donated to the Commission for fundraising. (raised \$216, making end-of-day balance of \$424.18)

F. Communications received:

1. resignation of RKA
2. tribal recognition application request for "Chikamaka-Cherokee Band of the South Cumberland Plateau" by James Meeks (12 aug)
3. tribal recognition application request for "United Eastern Lenape Nation" by Bonnie Knuckles (20 aug)
4. tribal recognition application request for "Remnant Yuchi Nation" by Lee Vest (21 aug)
5. individual recognition request by Steven H. Smith, Alcoa, member of the Eastern Band of Cherokee.
6. request for financial help by a person up near Bristol.

G. Commissioners' written reports

Vaughn - (verbal) has had child & mother in hospital; helping Sioux lady in area who had knee surgery, helped husband w/VA benefits

Walkingstick King - (verbal) attended Sunset hearing in Nashville - a real eye-opener; is still impressed that people don't know Commission exists, out in the community talking with people, a lot of concerns; attended Eagle Awards in Burns, had a good time, complimented Eagle Awards and Award recipients; fundraiser in Maryville - Slim Fest; talked w/area church members - ministry had raised thousands of dollars, assisted indians in North Carolina, they didn't know of need here; talked about recognition rules - forward or retreat?; a real eye-opener since the last meeting, gotta do whatever you can to help it survive; class motto: When you have done your best, and you have not succeeded, at least you have not failed.

- Teat - (read aloud. Appendix A.1)
- kunesh - (read aloud. Appendix A.2)
- Lynch - (read aloud. Appendix A.3)

## II. OLD BUSINESS

A. Report of Research Initiative Assessment, presented by Marion "Letha" Orrick, research coordinator for volunteer committee, American Indian Research Initiative, also an adjunct sociology instructor at Pellissippi College, Knoxville, with expertise in data analysis (not in writing), recommended a research design for the project and provided a draft report of the Community Assessment - Part 1, State of Tennessee, by the Committee for American Indian Research Initiative".

1st part is current research/data assessment. Upon approval/ suggestions/ recommendations by commission and committee members, hope to publish Part 1 by December 2007. Part 2 is a general health and education survey of AI/AN in Tennessee, to begin in 2008. Part 3 is an interactive website dedicated to AI/AN socio-economic characteristics, similar to North Carolina's interactive website maintained by the state and updated annually. (url?)

Highlights from preliminary report: The term "American Indian" refers to a racial/ethnic minority group in existing research; "American Indian/Alaska Native" refers to the inclusion of Alaska Natives as American Indian; there are four sub-categories of American Indian/Alaska Native, however only one is being used for planning and funding of programs, the "American Indian/Alaska Native alone non-hispanic" category, which reduces the Tennessee American Indian population from 42,000 to 15,000. (This is used because it is assumed that the sub-category "AI/AN of one race only and non-hispanic" are more likely to be enrolled members of tribes and therefore eligible for programs and services. This is a faulty assumption and underestimates the AI population, as the majority of enrolled members are combination races living off-reservation in urban areas of non-reservation states like Tennessee.)

Other notes of interest are the following: statistically Tennessee is regionally more similar to northeast than south; resembles Maryland in terms of demographics and Florida in terms of dispersion rates. Tennessee American Indians have higher infant mortality rates and lower educational attainment when compared to the general population. Tennessee American Indians more likely to suffer disparity in access to health care and education. Indicators of disparity discussed in the report include poverty, employment, and housing characteristics. American Indian/Alaska Natives in combination with one or more races resemble AI/AN alone non-hispanic race in terms of socio-economic characteristics. Finally and most importantly, some states like Tennessee still use just three racial categories for comparison - White, Black, and Other - making it difficult to assess and eliminate disparity among indigenous populations.

Teat asked what she needed from the Commission to help.

Orrick responded that the project has no funding; committee will seek disparity research grant to complete part two, the general health and education survey. For example, the committee will need a computer/server capable of managing survey responses of 42,000 plus respondents on survey. Recommends that commission partner with Office of Minority Health as well as tribal nations to coordinate and share info; develop relationships with American Indian communities here in Tennessee; and acknowledge that racial/ethnic disparity exists equally among AI/AN regardless of enrollment status.

B. UELN - Attorney Barbara W. Clark (on their organizational recognition status, was given 20 minutes)

Herstle Cross of the UELN & TNT PAC got up to introduce Ms Clark, said tribes in Tennessee that are not recognized ... read from prepared statement (11.53-12.05) (requested copy, told to ask attorney).

Barbara Clark, attorney in Knoxville, said she represents UELN on the recognition issue, that their 11 July letter outlines the UELN's position on recognition status, and that all issues will be taken up with the state Attorney General's office. Ended at 12.06.

12.08 recess for lunch. (Peta Merzlake - dramatic presentation on the Battle of the Little Greasy Grass and Massacre at Wounded Knee: "Triumph at Little Big Horn & Massacre at Wounded Knee - Through Indian Eyes")  
13.38 reconvened

C. Education

(1) Native American tourism map (Appendix B)

Moved to adopt, unanimous. tom kunesh, volunteered project manager.

(2) TN Indian music CD (Appendix C)

Moved to reconsider Jeanie King, seconded. Add 3 amendments:

5. a second cd of traditional Tennessee Native American music be planned; and
6. leave open the option for future development, if desired;
7. add umbrella home schools to section 1;

David Teat volunteered project manager. Approved, unanimous.

(3) Native American Educational resources

Lynch moved that the Commission explore the development of a Continuing Professional Education curriculum for elementary and high school teachers on Tennessee's Native American Indian historic tribes and culture over the next two years; using existing educators as resources: Brent Cox, UT-Martin; Kathryn Osburne, TN Tech, Cookeville; Vicki Rozema, UT-Knoxville.

Lynch, volunteered project manager. Approved, unanimous.

14.29 break

14.43 results of Silent Auction (raised \$216, contributed to the Commission)

14.55 reconvened

D. Sunset Review report

Van Lynch reported that she put out 2 public announcements re. the results of the Rules Review Hearing.

Rules Review/Status of Recognition Criteria

Teat said that we're being told to repeal the criteria if the Commission is to have a chance at surviving as a Commission, and was told by several sources: whether the Commission does it or not, the legislature is going to repeal the criteria. TDEC attorney Mark James added that the CNO is arguing that TN is preempted by federal indian law and thus that TN state government has no business in the indian-recognition issue.

### III. NEW BUSINESS

Public Comments

Against Repeal of TNCIA ch. 0785-1 Recognition Rule (Recognition Criteria For Native American Indian Nations, Tribes or Communities)

1. Billy Joe Nuckles said he would like a poll of all representatives and senators in Tennessee to see how they stand on the issue; does not take Sen. Bunch's word, we need to know how others stand.

2. Valerie Ohle - There are 15 states that have state recognition criteria, there are 60 state-recognized tribes, the majority of which are here in the Southeast, found 421 recent cases in indian law - only 5 have to do with recognition, none of them having anything to do with a state getting sued; Sen. Bunch's motion was not an either/or motion; he made it clear there was only one option - Get rid of the commission. Given other current indian-identification/recognition situations, state needs recognition criteria. We need to clarify similarity of Ch. 0785-1 to federal law - that "1900" date is unclear. It took 160 years to get recognition back - do we want to wait for another 160 years to get it back again?

For Repeal of TNCIA ch. 0785-1 Recognition Rule

1. Joe McCaleb - read ACTIA's majority recommendation (hardcopy submitted, see Appendix D).

A. Sunset Review Report/Legislative Proposals

(1) kunesh moved "defense of 0785-1" (attached, Appendix E) to explain adoption of recognition criteria and to initiate UAPA repeal process, voted yes.

Teat - yes, to save this Commission.

Walkingstick King - "don't back down, stay and fight", yes.

Vaughn - no, if we give this up, what will they ask us to give up next?

Lynch - risk of losing the Commission is greatest concern; repeal of recognition criteria does not mean everything is completely lost, worked on recognition since 2001, hard to give up something to which we've dedicated so much time and effort, voted yes.

vote: 4-1

kunesh: motion to empower the chair to effect the repeal process

approved: 4-0 (chair didn't vote)

kunesh: motion to suspend any action on the use or implementation of TNCIA Rule 0785-1, approved 3-1

(2) Delete TCIA Duties 5 and 6

kunesh: motion to request legislative amendment to the Commission's mandated duties regarding recognition to delete Duties 5 and 6 (TCA 4-34-103 § 5, 6), seconded.

Teat - This is an issue to revisit in the future - IF the Commission survives.

approved 4-1

kunesh: Request legislative amendment to add the appointment of one (1) Representative and one (1) Senator as non-voting members of the Commission, to be appointed by the Speaker of their respective chamber.  
approved 4-0

**B. Planning for the future [Legislative Review Committee]**

Agreed to study the possibility of statutory changes.

Ideas to be discussed at next meeting:

- delete references to "no compensation for travel"

TCA 4-34-104.(j) Members of the commission are to serve without compensation and shall not be reimbursed for travel expenses.

& TCA 4-34-108. Chair. The chair of the commission shall carry out the day-to-day responsibilities of the commission. The chair of the commission is to serve without compensation and shall not be reimbursed for travel expenses.

- 4-34-105.(b) add Jackson as potential meeting site; add Kingsport as potential meeting site
- change meeting site restriction from specific metro areas to grand divisions in general.
- request travel/per diem costs: Mark James to Knoxville \$69/day - motel, gas = 46¢/mile (based on IRS rate)

Commissioners should prepare personal expense reports citing income and explaining how much each commissioner spends/the percentage of discretionary income we (separately & together) have expended on Commission business.

Teat - finding a way to lobby the legislature not to sunset us;  
we need to be unified in our presentation to legislators.

16.38

## **IV. ORGANIZATIONAL REPORTS**

A. ACTIA (meeting on 18 august) - letter received, read by ACTIA chairman Joe McCaleb earlier (see Appendix D).

B. TNNAC (convention on 15-16 september) - letter received, outlined (hard to read) (see Appendix F).

C. NAIA - letter received, read.

D. ALLIANCE (no letter received)

Teat - chair should send letter of thanks to Adams Taxidermy & Deer Processing for donation of 80 lbs. of deer meat for today's dinners: J.O. & Darren 845-3553 (Claxton), and recognize Val Ohle & cooks for wonderful lunch.  
Walkingstick King - recognition of Eagle Awards recipients.

## V. CLOSING

### A. Public comments (4 mins. per person)

- a. Joe McCaleb - trial atty for 40 years, reads faces & body language  
decision to sunset the Commission was made before the hearing  
hopes attendees don't attack the Commission after meeting  
it's survived.

1. Soco Cody (gone)

2. Herstle Cross - no threats made. asked to come to our assistance, not fight us every inch of the way.

UENL, TNT PAC not going to attack you.

if you all can't do it, TNT PAC is going to try to do it.

- can I have my wife's time? ruling of the chair: granted.

will help Ms Orrick get a computer

discrimination - based on ignorance, need to educate legislators.

a lot of prominent people have signed on to help us

2. Marcia Cross (yielded time)

3. Valerie Ohle - was one of the unfortunate few who was in Nashville [for the sunset hearing]; we have some big things coming up - convention, next review hearing, etc - and also the Day of Healing - it's time for the community to begin that healing process.

4. Sandra K. Ellis - Muskogee, here since 1983, didn't know there were any indians in TN til dad asked her to represent him at Lord Alderdice meeting in Nashville. dad didn't tell her there would be 400 indians there.

5. Joe McCaleb

### B. Announcements

(1) Next Commission meeting: saturday, 1 december 2007, Memphis

(2) Other future meeting dates and places

17.15 move to adjourn

### C. Inspirational Words/Sending Forth

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dates to remember

+ TN American Indian Day: m, 24 September 2007

+ TN American Indian Month: October 2007

+ Day of Healing: m, 8 october

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*Minutes submitted by tom kunesh*

## Appendix A - Commissioners' reports

### 1. david teat

Commissioner Quarterly Activity Report to the TCIA  
From July, 12, 2007 to August, 25, 2007

7-14- 2007: i attended the Tommy Veal Memorial in Crossville, Tn.

7-15-2007: i met with ACTIA Vice-Chair Joe McCaleb to turn over all ACTIA papers, check book, etc. We discussed a multitude of things that were and are pertinent to the continuation and success of the ACTIA and the TCIA.

7-21-2007: i attended and participated in the specially called Commission meeting in Nashville as a newly appointed Commissioner.

7-22-2007: i attended the TNNAC meeting in Murfreesboro, Tn. i participated in a question and answer session at the end of their meeting.

7-27-2007: i attended the unveiling at the Crocket Theatre in Lawrenceburg, Tn. of a new Trail Of Tears painting done by Martin Methodist art professor Bernice Davidson. The painting depicts Native Americans Indians passing through Lawrenceburg on the Trail of Tears.

7-31-2007: i attended the Sunset Review Sub-committee hearing at Legislative Plaza in Nashville, Tn.

8-01-2007: i attended the Legislative Rules Review Committee hearing at Legislative Plaza in Nashville, Tn.

8-04-2007: i attended the Alliance for Native American Indian Rights meeting in Nashville, Tn. i spoke to the Alliance and fielded questions towards the end of the meeting.

8-12-2007: i attended the Eagle Awards Banquet in Burns, Tn. and enjoyed the fellowship of all present.

8-16-2007: i attended an N.A.I.A. meeting. i gave a report on the Sunset Review hearings and participated in a question and answer session.

8-18-2007: i attended the ACTIA quarterly meeting in Lebanon, Tn.

Since the Sunset Review hearings, i have been doing a cross section polling of constituents in my area asking for their opinion and advice on the course the TCIA should take in light of the unfavorable recommendation the Sunset Review Sub-committee voted to send to the next General Assembly. Shortly before and after the Sunset Review hearings, i have had several phone conversations and face to face conversations with various Legislators with regards to the results of the Sunset Review hearings.

Respectfully submitted,  
david teat, Commissioner, Nashville Metropolitan Area  
08.25.2007

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## Appendix A - Commissioners' reports

### 2. tom kunesh

TNCIA Commissioner Report - August 2007

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tom kunesh, Chattanooga

since the Commission meeting of 9 june ...

- attended the Chattanooga caucus of the TN Native American Convention on 23 june.
- attended two local gatherings for Honor Sacred Sites day in Chattanooga - the Chickamauga mound at dawn and the mounds on Moccasin Bend at noon, on sunday, 24 june.
- attended the Blood Assurance Minority Advisory Board meeting in Chattanooga on 10 july.
- attended the Tommy Veal memorial gathering near Crossville on 14 july.
- attended the special Commission meeting on 21 july in Nashville to compose the Commission's responses to the Sunset Review Subcommittee's questionnaire, and helped draft the Commission's response.
- attended the Commission's Sunset Review Hearing of the Joint Government Operations Subcommittee on 31 july in Nashville with Commissioners Lynch, Walkingstick and Teat.
- attended the monthly First Nations First Saturdays in Knoxville on 4 august.
- attended the annual Tennessee Eagle Awards banquet on 12 August in Burns "to honor 12 of Tennessee's finest Native American Heroes". Commissioners Lynch, Walkingstick and Teat were also present.
- attended monthly (third friday) Native American Fireside Chats at Audubon Acres in Chattanooga, the latest on 17 august. informed the groups about TNCIA news and asked their opinions on TNCIA issues.
- attended the 18 august ACTIA quarterly meeting at Cumberland University in Lebanon. Commissioner David Teat was also present.
- attended a roundtable discussion of the State of Chattanooga Region Report sponsored by the Community Research Council in Chattanooga on 23 august.

received solicitation to subscribe to Native American Report.

received negative comments about the Cherokee Wolf Clan.

passed along a legal issue re. ICWA enforcement to NAIA.

responded three phone calls from people wanting to know how to become members of indian tribes given their indian ancestors.

corresponded by email with constituents regarding the future of the Commission.

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## **Appendix A - Commissioners' reports**

### **3. Evangeline Lynch**

#### REPORT OF COMMISSIONER LYNCH

Tennessee Commission of Indian Affairs  
August 25, 2007, Knoxville

After a long illness, I have been stronger and more energetic and have been able to attend the following events:

1. June 23 - WTN caucus, Martin, TN
2. July 21 - Special commission meeting, Nashville, to help prepare the Sunset Questionnaire which was due the following Monday at noon, July 23
3. July 31 - Sunset Hearing before the Joint Governmental Operations Subcommittee, Legislative Plaza, which lasted three hours
4. August 1 - Recognition Criteria Hearing, Legislative Plaza
5. August 12 - Eagle Awards banquet, Burns, TN - received my third Eagle Award

In performing my day-to-day responsibilities, I have been in frequent communication with the Attorney General's office and through numerous emails to the TDEC office regarding Commission Indian affairs. Numerous hours have also been spent preparing for today's commission meeting.

Submitted by: Evangeline W. Lynch

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## **Appendix B: Tennessee Native American Indian Tourism Map Project proposal**

1. Whereas: Tennessee is known for its millennia of Native American Indian history; and
2. Whereas: There are approximately 50 Native American Indian historical sites in Tennessee, not including historical markers, of interest to state residents, Native American Indians and out-of-state tourists; and
3. Whereas: There is a need for educational material on Native American Indian history and geography in the State of Tennessee; and
4. Whereas: There is a need for tourism material on Native American Indian history and geography in the State of Tennessee; and
5. Whereas: If the Commission of Indian Affairs is to continue as a viable state agency there is a need for it to successfully complete a community project that will contribute to the welfare and benefit of the state; and
6. Whereas: The purposes of the commission include "Research and find local, state and federal resources of funding and other assistance for the implementation or continuation of meaningful programs for Indian citizens of the state" and "Assist Indian communities in social and economic development" (TCA 4-34-102.2 and 5); and
7. Whereas: The powers and duties of the commission include "Encourage and implement coordination of applicable resources to meet the needs of Indians in Tennessee" and "Cooperate with and secure the assistance of the local, state and federal governments or any agencies thereof in formulating any programs that the commission finds necessary or beneficial to Indians in Tennessee" (TCA 4-34-103.4 and 7);

Therefore be it Resolved by the Tennessee Commission of Indian Affairs

1. That the Commission endorse and support the writing of grants for the development of a Native American Indian tourism map project to produce an annotated map designed to educate and attract tourists to Native American Indian historical sites around Tennessee; and
2. That the Commission develop this project in conjunction with the state Historical Commission and Department of Tourist Development; and
3. That the Commission's proposed project sponsor and financial manager will be the Tennessee Commission of Indian Affairs, with the chairperson as acting Executive Director of the project as provided in TCA 4-34-108; and
4. That no monies from any grants received for this purpose shall accrue to the Commission of Indian Affairs as a whole or be paid to any individual commissioner for any services provided; and
5. That the Commission and individual commissioners shall receive maps and a commemorative plaque for their personal disbursement.

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## **Appendix C: Tennessee Native American Indian Educational Music CD Project proposal**

1. Whereas: Tennessee is known for its musicians, and Nashville, the state capital, is itself known as Music City; and
2. Whereas: There are many Native American Indian musicians in Tennessee; and
3. Whereas: There is a need for educational materials on Native American Indians in the State of Tennessee; and
4. Whereas: If the Commission of Indian Affairs is to continue as a viable state agency there is a need for it to successfully complete a community project that will contribute to the welfare and benefit of the state; and
5. Whereas: The purposes of the commission include "Research and find local, state and federal resources of funding and other assistance for the implementation or continuation of meaningful programs for Indian citizens of the state" and "Assist Indian communities in social and economic development" (TCA 4-34-102.2 and 5); and
6. Whereas: The powers and duties of the commission include "Encourage and implement coordination of applicable resources to meet the needs of Indians in Tennessee" and "Cooperate with and secure the assistance of the local, state and federal governments or any agencies thereof in formulating any programs that the commission finds necessary or beneficial to Indians in Tennessee" (TCA 4-34-103.4 and 7);

Therefore be it Resolved by the Tennessee Commission of Indian Affairs

1. That the Commission endorse and support the writing of grants for an educational school project to bring Native American Indian music and Tennessee Native American Indian musicians to Tennessee schools by means of a compilation CD to be distributed to all Tennessee's 2,232 K-12 schools and colleges, public and private, free of charge; and
2. That the Commission's proposed project sponsor and financial manager will be the Tennessee Commission of Indian Affairs, with the chairperson as acting Executive Director of the project as provided in TCA 4-34-108; and
3. That no monies from any grants received for this purpose shall accrue to the Commission of Indian Affairs as a whole or be paid to any individual commissioner for any services provided; and
4. That the Commission and individual commissioners shall receive CDs and a commemorative plaque for their personal disbursement.

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## **Appendix D - ACTIA recommendation on future status of TNCIA ch. 0785-1 Recognition Rule**

### ACTIA's RECOMMENDATION TO THE TCIA

ACTIA believes that the recognition criteria are important but not so important to cost the Commission its existence. ACTIA does not fault the Commission for spending a large amount of time over the past four years on recognition criteria because that was what many Indian people in Tennessee were demanding and ACTIA itself spent much of its time in reviewing various proposals for recommendation to the Commission. It has become clear, however, that the Commission must either move on or lose its status as a state agency. While there are benefits and disadvantages to being a state agency, ACTIA believes that in the long run, the Commission will be more effective remaining a state agency as opposed to becoming a private, non-profit entity.

There are many, many other issues of interest to Indian people in Tennessee including but not limited to education, medical assistance, housing assistance; working relationships with federally recognized tribes indigenous to Tennessee on repatriation issues; working relationships with non-profit Indian organizations in Tennessee such as the Alliance, NAIA and others; working relationships with other non-profit institutions that could assist Indian people such as Habitat for Humanity; and discovering ways and means to fund the Commission and strengthen it. Funding Commission activities and paying for the expenses of Commissioners to accomplish the goals and purposes established for the TCIA by legislation, is of primary importance before any of those goals or purposes are accomplished. ACTIA strongly recommends that the Commission establish a working committee of at least three (3) Commissioners and other interested persons for the sole purpose of exploring funding mechanisms and to report results to the Commission at each of its scheduled meetings.

Therefore, ACTIA recommends that the Commission take the necessary rulemaking procedures to repeal the Commission's Rule 0785-1, Recognition Criteria for Native American Indians, in accordance with the procedures established by state law; suspend any further action on the use or implementation of Rule 0785-1, which includes suspending action on any pending applications; and formally request legislative amendment to the Commission's mandated duties regarding recognition criteria. Additionally, ACTIA believes that there is merit in a proposal to request an additional legislative amendment that would add to the Commission the appointment of one (1) member of the House of Representatives and one (1) member of the Senate, from the Tennessee General Assembly, to the Commission as non-voting members and observers to attend each scheduled meeting of the Commission.

There is an additional suggestion that should be discussed of allowing those legislative members to vote on issues before the Commission but only in the event that the elected Commissioner, who resides in the particular District represented by the legislative member, is not present to vote. (This suggestion is not part of our recommendation, but made only for discussion)

Assuming this proposed action is accepted and acted on by the Commission to the end that the life of the Commission is extended by the General Assembly for another term, ACTIA recommends that the Commission begin immediately to formulate plans and act positively on the other goals mandated by law (TCA section 4-34-103).

Respectfully Submitted,  
Joe W. McCaleb, Acting Chair  
Advisory Council on Tennessee Indian Affairs  
Date: August 25, 2007

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## Appendix E - Defense of TNCIA Recognition Rule Chapter 0785-1

*adopted, TN Commission of Indian Affairs, saturday, 25 august 2007, Knoxville*

Reference: Uniform Administrative Procedures Act / UAPA

TCA 4-5-226. Expiration of rules.

- (e) In conducting the review of agency rules, the committees or subcommittees shall consider the following factors:
  - (1) Authority;
  - (2) Clarity;
  - (3) Consistency;
  - (4) Justification;
  - (5) Necessity, which shall include the need for a regulation where no regulations presently apply; and
  - (6) Reference.

1. Whereas: The State of Tennessee has authority to recognize Indian tribes per the opinion (No. 07-21 "State of Tennessee's Authority to Recognize Indian Tribes", 27 February 2007) of the state Attorney General; and
2. Whereas: The Commission of Indian Affairs has the "Authority" to "Establish appropriate procedures to provide for legal recognition by the state of presently unrecognized tribes, nations, groups, communities or individuals, and to provide for official state recognition by the commission of such" as described in Tennessee Code Annotated 4-34-103. Powers and duties, §6, which obligates the agency to adopt such a regulation; and
3. Whereas: The Attorney General and Secretary of State have determined that the existing Commission of Indian Affairs rule Chapter 0785-1, Recognition Criteria for Native American Indians, meets the requirement for "Clarity", i.e., grammatical and structural soundness of a rule that tends to ensure that the rule will be easily understood by those persons directly affected by such rule; and
4. Whereas: The existing Commission of Indian Affairs rule Chapter 0785-1, Recognition Criteria for Native American Indians, is consistent with the seven mandatory criteria of federal tribal recognition criteria (25 CFR 83), and includes a rigorous process requiring the petitioning group to provide evidence of its historical and continuous American Indian identity in a distinct community, including anthropological, historical, and genealogical research and presentation of evidence; and
5. Whereas: The Attorney General specifically reviewed the rule Chapter 0785-1, Recognition Criteria for Native American Indians, in light of the opposing opinion of the Cherokee Nation of Oklahoma of 7 november 2006, and determined that the concept of state tribal recognition criteria was consistent with the State's authority (No. 07-21, 27 February 2007), and in harmony with, and not in conflict with or contradictory to, existing provisions of laws; and
6. Whereas: The previous Commission of Indian Affairs established similar rules in 1990, and also rules for recognizing Native American Indian organizations and individuals, which remained in effect until 2001 and during which time only one group applied for recognition status as a tribe but later withdrew; and
7. Whereas: The Commission of Indian Affairs has been diligent in its efforts to become knowledgeable on the recognition issue, has been zealous over the past four years in pursuing the proper recognition rules; and

8. Whereas: Without such a rule in place and without Native American Indian organizational and historical review by the Commission of Indian Affairs, organizations desiring tribal status in the State will pursue the Counties, Legislature and Governor directly for recognition status, as has happened in the past (Etowah Cherokee Nation 1978, Cherokee Wolf Clan (Yuma, Carrol County, West TN): SJR0002 2007 Urges the TNCIA and the BIA to recognize the Cherokee Wolf Clan as Native American Indians; SB1681 2007 Authorizes commissioner of environment and conservation to issue recognition to certain Indian tribes; grants recognition to Cherokee Wolf Clan; SJR0657 2004 To recognize the Cherokee Wolf Clan as an official Native American Indian body in the State of Tennessee; recognition resolutions adopted by Davidson County/Nashville, passed and then repealed 2004; Roane County 13Nov2003, Van Buren County 8Dec2003, Lake County 15Dec2003); and Cherokee of Lawrence County (Lawrenceburg, Middle TN: HJR0877 2006 Urges the TN Commission of Indian Affairs and the US Bureau of Indian Affairs to take action on the petition for recognition as a Native American tribe submitted by the Cherokee of Lawrence County); and
9. Whereas: The existing Commission of Indian Affairs rule Chapter 0785-1, Recognition Criteria for Native American Indians, meets the requirement for "Necessity" by providing the public policy needs of the State for regulatory criteria by which to evaluate all future requests for State tribal recognition by organizations; and
10. Whereas: As "Reference" for the creation of the rule, Chapter 0785-1, Tennessee Code Annotated 4-34-103. Powers and duties, §6, specifically charges the Commission of Indian Affairs to "Establish appropriate procedures to provide for legal recognition by the state of presently unrecognized tribes, nations, groups, communities or individuals, and to provide for official state recognition by the commission of such"; and
11. Whereas: The Attorney General has determined that state recognition of Native American Indian tribes in the State of Tennessee poses no threat whatsoever to anti-gambling/anti-casino interests in the state as expressed in Opinion No. 01-019 "State Lottery - Impact of Federal Indian Gaming Regulatory Act" of 7 February 2001 and Opinion No. 01-064 "State Lottery and the Federal Indian Gaming Regulatory Act" of 24 April 2001; and
12. Whereas: Given that the Joint Government Operations Subcommittee on Sunset Review of the Commission of Indian Affairs has determined on 31 July 2007 that the rule Chapter 0785-1, Recognition Criteria for Native American Indians, is politically problematic, and has thus recommended that the Commission of Indian Affairs not be extended beyond its current sunset date of 30 June 2008;

*Therefore be it resolved,*

That the Commission of Indian Affairs initiate rulemaking procedures to repeal the Commission's Rule 0785-1, Recognition Criteria for Native American Indians, in accordance with the Uniform Administrative Procedures Act (TCA 4-5-201).

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## Appendix F - TNNAC Report

Commissioners and Guests,

This is an update on TNNAC. I am unable to attend the TCIA Meeting in Knoxville today so this is my report for the Commissioners and the people.

TNNAC is very busy getting ready for the Convention it is on September 15, 2007 at Henry Horton State Park in Chapel Hill, Tennessee. Make sure that you are there if you are a delegate. And guests are allowed to watch but are not allowed to participate. Please make sure you bring chairs to sit in, it is outside. We have a shelter and it has its own restrooms attached and a grill. We have decided to do Hamburgers and Hotdogs and salad stuff for our vegans, instead of the Arby's roast beef sandwiches which the Board did not seem to fond of.

So we will see our Nominees and our Delegates on the 15th. This is to prioritize the nominees to be sent to the State.

Also an update on the Memphis replacement, it was brought to our attention that Ruth Knight Allen resigned from her position on the commission. But until TNNAC receives her letter we can not move forward with the replacement, we can not take the word of a third party we have to have the letter signed by the Resigning Commissioner in our hands. So she resigned on July 27, 2007. Of course I did not receive this until later. I got a letter from Shelley Allen asking me what the process for replacement was on. Monday 06 Aug 2007 15:20:24 - 0400 at which time I answered and told her the process. Monday August 6, 2007 6:19 PM I sent her a letter saying as soon as I receive your Mothers resignation letter I will start the Replacement process which is a packet we put together to send to the state.

Then for everyone else this is what TNNAC does, you (Shelley) are the next Nominee in line for your Mothers seat so we will use the TNNAC process that we have for sending in nominees when we only have one name from the Convention left for the position, and that is in our By-laws at [www.tnnac.org](http://www.tnnac.org) under section 3 Duties number 13.

If insufficient nominees then TNNAC will ask the ACTIA elected member from that caucus area which would have been in 2005 and which is John Smith and then we go to the Caucus Elected Board Member from that caucus area and that would be Helen Vinson and Ed Vinson so we would send in the names of these members with the democratic process that puts them there. Now we will stress that Shelley Allen is the Convention choice for the empty Memphis seat and the others are just back ups for the Statute that created the Commission. Then on Monday, August 20, 2007 10:33 PM I sent Shelley a letter with the Oath of Office Attached and ask her to go ahead and fill it out and get it notarized and mail it back because this will speed up the process when we send in the packet. And I am waiting on the paper work from the other nominees to get in and then I will send the packet to Shelley and the others for proofing, then it will be mailed to the Appointer. I hope this answers some questions. The hold up was in not receiving the resignation when it was handed in to TDEC. It was two weeks (August 10, 2007) later when TNNAC received a copy then we started the process. So I think we are doing a good job so far. I do think the TCIA should have a process in place for turning in resignations, it should go to the Commission then to the Appointer and TNNAC and the Caucus Area Chair. Whoever is resigning could write four letters and put them in the mail the same day or hand in the one to the Commission and mail the other three. It would speed up the process.

But back to TNNAC, we the TNNAC board voted to send in Brent Cox's Nomination for the Tennessee Historical Commission early before the Convention because they are going to appoint someone to the seat that ends on September 30th. And they do pick the person before the termination date so we voted that since Brent pulled all 7 Caucus areas we were sure he would be approved by the Convention and went ahead and sent in his nomination packet for appointment. We have not heard anything yet just waiting. But they had 3 seats coming up at the end of September. And Boards and Commissions sent us a Thank you letter for sending in Brent's nomination.

So that is it for TNNAC just try and be at the convention if you are a delegate.

Vicky Garland, 1st Vice-Chair TNNAC <[vlg42@hotmail.com](mailto:vlg42@hotmail.com)>  
August 22, 2005

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## **Appendix G - UELN/Herstle Cross report**

[TNCIA secretary requested a digital copy of Cross' prepared statement which Cross read at the meeting, and was informed that the request would have to be approved by their attorney, Barbara W. Clark. Has sent a msg to both Cross and Clark requesting Cross' statement, 6sep07. If/when received and checked with tape recording of meeting, will insert here.]

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