

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date:

~~OCT 26 2017~~
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ORDINANCE NO. 20 (2017)

WHEREAS, The Eastern Band of Cherokee Indians has the inherent authority to make and enforce the laws within its jurisdictional boundaries and the duty to pass laws that respond to the concerns of health, welfare and safety of its people and the community; and

WHEREAS, the assessment and collection of criminal fines and fees should act to deter the commission of crimes as well as provide revenue to help fund the criminal justice system; and

WHEREAS, the criminal fines and fees charged to defendant's in the Cherokee Court should be deemed debts to the Tribe and therefore garnishing defendant's per capita to pay for these debts should be allowed; and

WHEREAS, this makes generation of revenue more certain for the Tribe and the Cherokee Court.

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, the Cherokee Code be amended as follows:

Sec. 16C-2. - Definitions.

For purposes of this chapter:

Act shall mean the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. 2701 et seq.

BIA shall mean the Bureau of Indian Affairs, or the official of such agency with the duty or assigned authority to act in behalf of the agency.

Capital improvement program (CIP) shall mean the program established to provide funding for ongoing capital improvements of Tribal operations and programs.

Cherokee Central Schools Assistance Fund shall mean that fund established to provide funding to implement the Cherokee Central Schools Strategic Plan and the Facility Master Plan.

Cherokee Central School Board shall mean those officials elected to carry out the policies and procedures for the Cherokee Central School System.

Debt service sinking fund shall mean the fund established for the purposes set forth in Section 16C-14.

Distributable net revenue shall mean all revenue distributed to the Tribe by a gaming operation, which shall be calculated as follows: gross revenue of the gaming operation less (1) prizes and operating expenses, (2) payments owed to a management contractor, (3) debt service payments (including without limitation principal, interest, and related fees, costs, and expenses), and (4) contributions to duly authorized capital/expansion reserve funds. Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the Tribal Gaming Commission.

Eligibility for disbursement shall apply to any person who is enrolled as of September 30, 1997, March 31, 1998, and each subsequent disbursement date thereafter with the Tribe, provided that person is enrolled no less than 60 days preceding a scheduled disbursement and meets all requirements of this chapter.

Endowment and Investment Funds shall mean the trust funds established pursuant to this chapter to administer funds allocated for investment and appreciation for the long-term benefit of the Tribe and its members.

External investments shall mean investments that may be made by the Minors Trust Fund, Debt Service Sinking Fund and the Endowment and Investment Funds which must be made under the Prudent Investor Rule, in accordance with the investments permitted to be made by such funds in this chapter, as amended or supplemented from time to time.

Equivalent degree shall mean a high school diploma, GED, degree from a vocational or technical college, or other appropriate educational institution as determined by the Tribe.

Higher education shall mean college, graduate, or professional school. Higher education shall not mean secondary school.

Higher education funding program shall mean those funds established to provide funds to benefit enrolled members who attend institutions of higher education.

Housing Fund shall mean the fund created for the purpose of providing funds to assist in housing development as permitted to be made by this chapter, as amended or supplemented from time to time.

Interim Distribution Fund shall mean a fund into which 50 percent of distributable net revenue is deposited monthly by Tribal Management and from which funds are distributed as per capita payments to competent adult members on a semi-annual basis and into the Minors Trust Fund semi-annually for minor and other legally incompetent members. This Fund shall be invested only in U.S. Treasury bills, other U.S. Government obligations or collateralized bank certificates of deposits. Only one type of instrument shall be used during the accrual period and the type of investment used will be determined by interest rate predictions within the accrual period. The obligations shall have a maturity date of no later than November 15 and May 15. The instrument used during each period shall be approved by the Investment Committee and the Tribal Budget and Finance Office by September 1 and March 1.

Internal investments shall mean investments that are made by allocation or distribution of funds through the Tribal budget process.

Manager shall mean that person or institution retained by the Tribe to manage and oversee the investments of the Minors Trust Fund.

Members shall mean those persons who are duly recognized as enrolled members of the Eastern Band of Cherokee Indians by the Tribe.

Minor shall mean a member who has not yet reached the age of 18 years.

Minor Trust Fund shall mean a fund created by the Tribe pursuant to Section 16C-6 to receive a portion of the distributable net revenue for and on behalf of enrolled minor and incompetent members of the Tribe.

Revenue allocation plan shall mean this Chapter 16C of the Cherokee Code.

State shall mean the State of North Carolina.

Tribal Council shall mean the legislative body of the Eastern Band of Cherokee Indians.

Tribal Court shall mean the Cherokee Court established pursuant to Article 7 of the Cherokee Code.

Tribal Entity shall mean only Qualla Housing Authority, Cherokee Boys Club, the Tribal Casino Gaming Enterprise, the Tribal Bingo Enterprise, the Cherokee Indian Hospital Authority and the Eastern Band of Cherokee Indians Community Development Corporation (Sequoyah Fund).

Tribal management shall mean the Executive Committee and the Tribal Finance Officer, who shall be jointly responsible for verifying the calculation of distributable net revenue on a monthly basis for purposes of this chapter and for making monthly deposits of such distributable net revenue into the appropriate accounts or funds under this chapter.

Tribal shares is defined as: $\text{Total Shares} = 12 \text{ months}/12 \text{ shares of the competent adult} + 12 \text{ months}/12 \text{ shares minors} + x \text{ months per deceased members (as defined in section 16C-5(b))}/12 \text{ shares}$.

Tribe shall mean the Eastern Band of Cherokee Indians, ~~except for the narrow purpose of garnishments for criminal fines and fees issued by the Cherokee Court as defined in section 16C-5(d).~~ It does not mean individual members of the Tribe.

Sec. 16C-5. - Distribution to members.

- (a) *Semi-annual distribution.* Per capita payments shall be made two times each year to all competent adult members eligible for the distribution as set forth in section 16C-4. Likewise, an appropriate share shall be set aside twice each year in the Minors Trust Fund on behalf of minor and incompetent members.
- (b) *Distribution for deceased members.* Eligible members as defined under section 16C-4 who have passed away prior to the date of any scheduled disbursement shall be

eligible to receive a pro rata share of the proposed disbursement for each and every month during the calculation period that they were alive. The Tribal Finance Office shall disburse any and all funds of the deceased Tribal member to the authorized, or court appointed, administrator for the deceased's estate.

- (c) *Distribution to handicapped members.* Eligible minors who have a severe handicap or terminal illness may request early distribution of per capita payments through their parent or guardian in accordance with section 16C-6(c)(3).
- (d) *Garnishment.* Except as specifically set forth in this section, the per capita disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity, including the Tribal Court, ~~for criminal court fines and fees.~~ Per capita payments may be garnished only as follows:
 - (1) *Garnishment for child support.* A parent, guardian, court-appointed trustee, or other individual or entity, who has provided for the support of any minor Tribal member, may request the court-ordered garnishment of any responsible enrolled member's per capita distribution for the support of the minor child. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.
 - (2) *Garnishment for debts owed to the Eastern Band of Cherokee Indians.* The Tribe, ~~with the exception made in 16C-5(d),~~ including the Cherokee Court or a Tribal entity as defined in this Chapter, may administratively garnish a member's per capita payment to reimburse the Tribe or the Tribal entity for any outstanding fees, costs, rent, judgments, user fees, or other charges owed to the Tribe or the Tribal entity. This subsection shall not apply to fees, costs, rent, judgments, user fees, or other charges owed to individual Tribal members except for deceased Tribal member's estates collecting money judgments, or for criminal restitution ordered in a criminal sentence, which garnishment for such collection shall be allowed. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.
 - (3) *Procedure.* Garnishment orders may only be entered if the following minimum due process requirements have been met:
 - (A) Garnishment of per capita is only permitted to enforce a valid, final, and enforceable court order or judgment entered after the defendant was personally served with a summons and complaint, and given an opportunity to be heard in compliance with the law of the jurisdiction granting the judgment.
 - (B) The defendant must be given notice of the request for garnishment, either in the complaint originally served on the defendant or by a motion served on the defendant by first class mail at least ten days prior to hearing on the garnishment motion.
 - (C) A list of garnishments must be received by the Tribal finance office no less than 30 days before a scheduled disbursement.

- (D) The garnished funds shall be deposited with the Tribal Court for disbursement in accordance with the court order after the time for legal review under subparagraph (d)(4) has passed.
- (E) After these procedures have been followed once, the garnishment order shall remain in effect for subsequent distributions until the debt is paid in full.
- (4) *Legal review.* Funds garnished pursuant to Tribal court order shall be held by the Tribal finance office for a period of ten working days after the per capita disbursement. Upon a request within those ten days by a member whose per capita has been garnished, the office of the attorney general will review the court records to ensure there was compliance with the procedures set forth in this section. Upon discovery of a failure to comply with these procedures, the office of the attorney general will notify the court and the funds shall be held by the court in escrow until the Tribal member can be given notice and an opportunity to be heard.

BE IT FINALLY RESOLVED that all resolutions that are inconsistent with this resolution are rescinded, and that this resolution shall become effective when ratified by the Principal Chief.

Submitted by the Chief Justice of the Cherokee Court of the Eastern Band of Cherokee Indians