

## **Update #64**

*The views, opinions and commentary in this update are those of Congressman Red Corn. They are his alone, and do not necessarily represent the views and opinions of the Osage Nation Congress.*

### **16<sup>th</sup> Special Session**

The Congress just completed the 16<sup>th</sup> Special Session. The Congress contemplated bills related to our tobacco taxes, waiver of sovereign immunity for the purpose of entering into a tobacco compact with the State, and appropriations for the costs of an ongoing suit with the State regarding personal income tax and our reservation status.

#### **ONCR 09-01 – Authorizing a limited waiver of Sovereign Immunity**

This resolution was required by the Constitution (Article XIX) before the Executive Branch could offer a limited waiver of sovereign immunity necessary to negotiate and execute a new Tobacco Tax Compact with the State of Oklahoma. The resolution passed unanimously. The Congress was briefed on the status of compact negotiations a few weeks prior to this session. The Compact is in the final stages of negotiation and should be made public soon.

#### **ONCA 09-01 – Amending the 2006 Revenue Tax Act**

This Act, also passed unanimously, made several technical corrections to the 2006 Act. The technical corrections consisted of name changes from the “Osage Tribe of Indians” to the “Osage Nation” and other similar revisions. The one substantive change was the tax rates on cigarettes sold by individual tribal retailers, which increased to \$2.57 per carton of 20 cigarettes sold in the “border areas” of the state. The tax had been proposed at \$3.57 in the original bill, but a late amendment lowered it by one dollar per carton after smoke shop owners in the border areas lobbied the Congress for change. The amendment passed unanimously, 11-0.

#### **ONCA09-02 – Appropriating funds for the ongoing lawsuit, *Osage Nation v. Kemp***

This lawsuit, filed in 2001, seeks to exempt from state income tax those Osages who work for the Nation and live within reservation boundaries (Osage County). The suit further seeks to have reservation status acknowledged judicially by the court.

The suit has yet to be tried on its merits. Since 2001, the state has executed many legal maneuvers to get the suit dismissed. The suit is expected to be tried in fiscal year 2009.

At issue in ONCA 09-01 was the appropriation of funds for the suit. Expected costs for the suit were just under \$500,000, including potential appeals to higher courts. The

Executive had asked for \$1,000,000, and amount equal to an appropriation earmarked by the State of Oklahoma for “Osage lawsuits”. The bill, as introduced, also contained a provision for spending the funds in future fiscal years.

The Government Operations committee received the bill and worked out a compromise introduced by Congressman Anthony Shackelford. The amendments adopted by the committee restricted the spending of the appropriated funds to FY2009, making \$498,000 available to pursue the litigation, and holding \$502,000 in reserve for the same purpose. Under the compromise, the reserve funds may only be released for expenditure by a resolution of the Congress. Mr. Shackelford read into the record a letter from the Controller that the reserve funds under the amended bill would not be encumbered, meaning the funds would be available for other appropriations if needed.

The amended bill was voted out unanimously with a “do pass” recommendation (Shackelford, Supernaw, Freeman, Red Corn, Mason) and passed on the final floor vote, 9-2, with Congresspersons Supernaw and Anderson voting no.

In my opinion, the compromise was a good one. The Congress appropriated only the estimated cost of the suit and the appeal, yet the Executive may point to the reserve funds as an expression of resolve by the Nation to fight for our reservation status.

### **The Open Records Act**

For the past two months I’ve been working on an Open Records Act for the Osage Nation. The Act has been through about five drafts, and hopefully it will be pre-filed and posted online for public comment by the middle of January.

If any Update readers have specific comments on the subject of open records, please send them to me via email at either of the addresses below. After the public comment period, the bill may be revised prior to introduction at the Spring Session in March.

As always, please share your opinions and thoughts with me at your convenience.

With respect,

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