

Ponca Tribe Election Board
PO Box 2037
Ponca City, OK 74602-2037

Dan Deerinwater
Director
Southern Plains Region
Bureau of Indian Affairs
PO Box 368
Anadarko OK 73005

September 3, 2009

Via facsimile No. (405) 247-9240 and USPS First Class Mail

Re: Ponca Tribe election

Dear Mr. Deerinwater:

The Ponca Tribe Election Board requests the assistance of the Bureau of Indian Affairs in the Ponca Tribal election process. The Ponca Tribe's Constitution calls for the Secretary of Interior to call an election if the Election Board fails to do so. Given the recent court rulings throwing out the December 2008 election, the tribe has struggled with whether and when to hold an election to replace the previous election. Perhaps the BIA is considering holding an election if the Board doesn't. Alternatively, we are concerned that if we hold an election the BIA may not recognize those leaders if the election is unauthorized or illegal. Thus your opinion will help greatly.

The Election Board wishes to follow the law. Given our best understanding of the law and the present circumstances, the Election Board on September 2, 2009, voted to cancel the election previously scheduled for September 19, 2009, for the following reasons:

1. Uncertainty about the legal authority to call an election. The Board finds no authorization in the Constitution or Election law to call an election in this situation.
2. Uncertainty about the legality of not requiring notarized affidavit of absentee ballots. District Court Judge Tripp voided the last election because the absentee ballots did not include a notarized affidavit. However the Board finds that requiring affidavits is an unconstitutional burden on absentee voters. Absentee voters have been instructed that a notary is not required. The inevitable lawsuit following this election would undoubtedly also void this election if heard by the same Judge. With no possibility of appeal per the

Constitution, the Board is caught between holding a void election and an unconstitutional election.

3. Insufficient time to perform background checks. The Constitution has certain requirements for Business Council members and the Board is obliged to verify the eligibility of candidates before placing them on the ballot. With 24 persons registering for this election, there is not enough time to do the research before absentee ballots must be mailed.
4. Election Board turnover. In the past month several members of the Board have resigned and been replaced. This has made it difficult to maintain continuity in conducting this election.
5. Pending Court Cases. Four out of the five members of the Board are scheduled for a hearing on a contempt of court charge before Judge Tripp on September 9. These members were informed on September 2, 2009, that they are subject to six months in jail. The possibility of the majority of the Board being incarcerated on the scheduled election day makes planning for the election impossible.
6. Insecurity of the PO Box. The Board rented a Post Office box for the secure receipt of absentee ballots, however access to the box is not now under the control of the Board and so the security of the absentee ballot box is compromised. The Board cannot know if absentee ballots have been added to or removed from the PO Box. While other security measures were taken, the special PO Box was an important part of the security plan which is now lost.
7. Uncertainty of adequate notice. Notice of the election was not by paid advertisement in local papers but only by a news article written by a reporter. While the news article was generally accurate, the current board finds that it may be inadequate notice and is subject to legal challenge.

Please advise the Ponca Tribe as to whether an election should be held and if so what rules should be followed in order for such an election to be recognized by the BIA. Due to the uncertainty of funding by the Business Committee, would the BIA assist in funding future elections? Finally, as evidenced by the trouble surrounding this recent election and strongly recommended by Judge Mason-Moore in 2006, the Ponca Tribal election laws need thorough revision in order to better assure fair elections. Would the BIA be able to assist in such revision? The Board does not want the BIA to have to step in and hold an election but will if our understanding of the law is flawed. Advice and

assistance from the BIA will help settle these questions for the Tribe and begin to establish a stronger government.

Thank you for your consideration of this important issue.

Respectfully,

Arlington LeClair
Election Board Chairman

Cc: candidates
Ponca City News