

**STATE OF TENNESSEE**

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Opinion No. 04-138

Legal Relationship Between Tennessee Commission of Indian Affairs and Tennessee Native American Convention and Advisory Council of the Tennessee Indian Affairs

**QUESTION**

Under Tenn. Code Ann. §§ 4-34-101 to -108 (Supp. 2003), do the statutes establish a legal relationship between the Tennessee Commission of Indian Affairs and the Advisory Council of the Tennessee Indian Affairs (ACTIA) and Tennessee Native American Convention (TNNAC) that requires reports from them at each meeting of the Commission?

**OPINION**

No. The statutes do not establish any legal relationship between the Tennessee Commission of Indian Affairs and ACTIA or TNNAC that requires them to present reports to the Commission. If they choose to do so, ACTIA and TNNAC may address the Commission under Tenn. Code Ann. § 4-34-105(l) which provides the public an opportunity to be heard before a Commission meeting is adjourned.

**ANALYSIS**

The Tennessee Commission of Indian Affairs (Commission) was created by Tenn. Code Ann. §§ 4-34-101 to -108 (Supp. 2003). Under Tenn. Code Ann. § 4-34-105(m), the Commission shall establish a rules committee to develop procedural and operating rules for the Commission. The rules committee is creating standing rules for the Commission, and proposed standing rule #4 provides as follows:

4. Reports from the commissioners, committees, (ACTIA) Advisory Council of the Tennessee Indian Affairs and TNNAC (TN Native American Convention) shall be heard at each meeting.
  - a. commissioners are accountable to the state's constituency and should report quarterly on their activities on behalf of the Indian community
  - b. Commission committees are accountable to the Commission and should report quarterly on their activities on behalf of the Indian

- c. community  
confirms the Commission's working relationship with ACTIA whose duties include studying and researching issues for the Commission and to advise the Commission on future issues
- d. confirms the Commission's oversight relationship to all organizations involving Indian Affairs, including TNNAC as the election organization of the Indian community

The question presented is whether the Commission is legally required to provide in its procedural and operating rules that reports from ACTIA and TNNAC will be received at each Commission meeting. The enabling statutes for the Tennessee Commission of Indian Affairs do not establish any legal relationship between the Commission and ACTIA or TNNAC. Tenn. Code Ann. § 4-34-101 *et seq.* ACTIA is not mentioned in any part of the statutes. The only mention of TNNAC is in Tenn. Code Ann. § 4-34-104, which provides for the appointment of the commissioners. Tenn. Code Ann. § 4-34-104(b) requires TNNAC to submit a list of not less than two (2) names for each position on the Commission to be appointed. The Speakers of the Senate and the House and the Governor appoint the commissioners from the names that TNNAC submits. The Commission has no oversight authority over TNNAC, nor does it have any other relationship with TNNAC grounded in the statutes. Nothing in the enabling statutes requires ACTIA or TNNAC to provide reports to the Commission at each meeting.

Tenn. Code Ann. § 4-34-105(l)(1) provides that “Commission meetings shall not be adjourned until members of the public attending such meeting have had an opportunity to address the commission.” For purposes of this statute, TNNAC and ACTIA may be considered “members of the public.” In light of Tenn. Code Ann. § 4-34-105(l)(1), a representative of TNNAC or ACTIA may make comment during the public comment portion of Commission meetings, although, as indicated above, neither organization is legally obligated to do so.

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