

Oneida Business Committee Agenda Request

1. Meeting Date Requested: ___ / ___ / ___

2. General Information:

Session: Open Executive - See instructions for the applicable laws, then choose one:

Agenda Header:

Accept as Information only

Action - please describe:

3. Supporting Materials

Report Resolution Contract

Other:

1.

3.

2.

4.

Business Committee signature required

4. Budget Information

Budgeted - Tribal Contribution

Budgeted - Grant Funded

Unbudgeted

5. Submission

Authorized Sponsor / Liaison:

Primary Requestor:

Your Name, Title / Dept. or Tribal Member

Additional Requestor:

Name, Title / Dept.

Additional Requestor:

Name, Title / Dept.

Oneida Business Committee Agenda Request

6. Cover Memo:

Describe the purpose, background/history, and action requested:

Accept legal opinion regarding the resolution from the Genskow petition - Chain of Command.

- 1) Save a copy of this form for your records.
- 2) Print this form as a *.pdf *OR* print and scan this form in as *.pdf.
- 3) E-mail this form and all supporting materials in a **SINGLE** *.pdf file to: BC_Agenda_Requests@oneidanation.org

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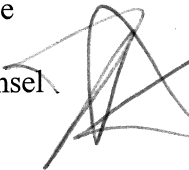
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MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel 

DATE: September 2, 2015

SUBJECT: Genskow – Petition – Chain of Command

You have requested a legal review regarding a petition submitted by Madelyn Genskow. The petition contains six resolutions. The legal opinion will review only the resolution identified above. The Enrollment Department has verified a sufficient number of signatures on the petition.

The resolution contains three Whereas sections.

- "...in December of 2014 after all the departments of the Tribe had turned in their budgets with the 12% cuts required by the Tribal Treasurer, there was \$800,000 remaining to be spent. The Treasurer sent out a memo informing the departments could request more funds by a certain date."
- "...because of the Oneida Chain of Command System required that the request for more funds needed to go from the Elder Director to the Area Manager then to the Governmental Services Division Director then to the Oneida Business Committee."
- "...the system is not set up to make sure that request sent up the Chain of Command are documented that the request was received at the next stop and forward on to the next stop of the chain of command until it reaches the Business Committee."

Whereas sections are intended to provide legislative history and background regarding why the resolution is brought forward. Whereas sections are not enforceable.

The resolution contains seven Resolve sections.

- "...when important items are sent from a Program Director to the next stop on the chain of command it must be emailed by 9:00 a.m. An email that it has been received must be sent to the sender in two hours and sit must go at each stop including the Business Committee."
- "...the person in charge must see to it, that if they are ill or on vacation a line of responsibility in their office must be established to make the return email to the sender which confirms that the email was received."
- "...if the item that was emailed is time sensitive. A line of responsibility must be established in each office of the person in charge so that if the person in charge is not there everything does not stop."
- "...the Governmental Services Division Directions office which is located in a cottage behind the Fitness Center and where only three people work must be moved to the Little Bear or Norbert Hill Center or Skenandoah Complex where Tribal members can find it if they have concerns about issues in Governmental Services Division Director."

- “...the Governmental Services Division Director must return phone call to Tribal members who have issues about Governmental Services.”
- “...the Governmental Division Services must see to it that there is someone to handle issues if each one of the three of them who are at that cottage are ill.
- “...if this ever happens again, the chain of command system must be stopped.”

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, and various other resources. This opinion is broken into sections to address the issues raised in the resolution – chain-of-command and Fiscal Year 2015 Budget actions.

Supervision and Reporting or Chain-of-Command and Governmental Services Division

Managing employees and programs requires a method of reporting and supervision. The Tribal government utilizes a nested hierarchy of employees-supervisors, programs-areas-divisions to organize and manage individuals and activities.¹ This is a reference to a chain-of-command system to manage approximately 2700 employees, 500 programs or services, and three enterprises (gaming, farms, and retail). This nested hierarchy arranges activities generally as identified in the following examples.

- Employees managed by supervisors, who are collected and managed by Area Managers, who are then collected and managed by a Division Director.
- Retail location and subject matter areas.
- Gaming subject matter areas – i.e. finance, table games, slots, player management.

The Governmental Services Division is organized as identified in the first bullet above. The structure of the Governmental Services Division is set forth in the attachment.

The Governmental Services Division has adopted two Standard Operating Procedures to address the chain-of-command and chain-of-communication. The purpose of these two procedures are to “help in avoiding the circumvention of staff who are responsible for providing direct oversight and promotes good communication/respect for one another.” *Chain of Command SOP, Sec. 1*. The procedures contain the following direction.

- 3.1. The staff understands that in order to properly accomplish the work we need achieved, we must always adhere to the Chain of Command. This promotes respect for one another, and eliminates conflicts and time wasted in terms of having only the necessary people involved.

The Governmental Services Division has outlined an organizational hierarchy and employees are notified of this hierarchy through job descriptions and notices by supervisors, Area Managers and the Division Director. Issues which are not addressed by those closest to the program decision-making can be brought to the next level to be addressed until reaching the Division Director. Each level is directed to verify that the issue has been correctly processed through this chain-of-command.

In order to support this chain-of-command, the Governmental Services Division has also adopted a Chain-of-Communication Standard Operating Procedures. The purpose of these procedures is

¹ See general references to this in the Tribe’s Personnel Policies and Procedures in regards to grievances and complaints for example.

to, "...outline the chain-of-communication that all Governmental Service employees shall follow with urgent or critical work-related written communication may concern GSD management, Using the chain-of-communication provides consistent and timely notice to GSD management of important matters." *Sec. 1.*

In addition, the Governmental Services Division Director has identified there are expectations within the administration offices. The Governmental Services Division Director has identified that the administration offices is staffed during normal working hours, barring unforeseen circumstances. When that occurs, voicemail, mobile phones, and e-mail are available as forms of communication and which are encouraged to be utilized in the event staff is in meetings or unavailable. Finally, the Governmental Services Division Director has identified that, consistent with the division's Standard Operating Procedures, he forwards questions and complaints to the appropriate level of the chain-of-command to address.

Fiscal Year 2015 Budget Actions

The Fiscal Year 2015 budget was developed during a transition year from one Oneida Business Committee to another. The current Treasurer, upon receipt of updated information and the Oneida Business Committee members having been newly elected, determined that review of the budget was needed. This resulted in the budget being revised by the Tribal organization resubmitting budget requests. The final draft budget proposal resulted in unbudgeted projected revenues in the amount of \$703,448.00.

A December 16, 2014, memo from the Treasurer outlined a process by which programs and operations of the Tribe could request this finding be reallocated back to the program or operational unit. The request must follow three directions.

1. The request for funds must be relative to the 12% budget cut for your specific area.
2. Complete the attached spreadsheet and include an executive summary as support for your application.
3. Submit your applications no later than 4:30 p.m. on December 29, 2014, to the Treasurer's office. Late applications will not be considered.

This memo from the Treasurer was forwarded to the appropriate management in the Governmental Services Division on December 18, 2014. The instructions identified that if the program was interested they should notify the Governmental Services Division administration so the request could be coordinated with other division requests.

The Elder Services Program was aware of the memo, the application requirements and the deadlines for submitting an application. The initial request from the Elder Services Program was forwarded to the Program Manager, the Area Manager, and the Division Director, among other staff later that same day. A review of the request identified that it was missing one of the elements required in the Treasurer's memo and was returned to the program to put together a complete request. The program personnel were also notified in that same e-mail to submit the request directly to the Treasurer and to copy the Treasurer's Legislative Aide. The request was not sent to the Treasurer or the Treasurer's Legislative Aide.

The Fiscal Year 2015 budget was presented to the General Tribal Council and adopted. On the floor of that meeting was discussion of the funding for Elder Services and the request for excess funds that did not get filed before the deadline. The members rejected a motion regarding Elderly Services and the Oneida Nation Commission on Aging. In addition, members did specifically identify that failure to submit a timely request did not require action by the General Tribal Council to increase funding for that program.

An investigation was made by the Division Director and appropriate action was taken to assure that it would not occur again in the future. Specific discussion regarding individual employees and disciplinary action would be in violation of the confidentiality requirements of the Oneida Personnel Policies and Procedures. Under those rules, employment related decisions are delegated to be managed through the organizational processes and the Oneida Personnel Policies and Procedure, the Human Resources Department and the Personnel Commission. Discussion of individuals on the floor would be in violation of the General Tribal Council's delegation of authority and responsibility to various entities of the Tribe. *See also Removal Law, historical actions leading up to resolution # GTC-2-25-82.*

Analysis

NOTE: This resolution identifies information and actions related to the Governmental Services Division. It is presumed that this resolution will have an affect ONLY on the Governmental Services Division and no other division or organizational group of the Tribe. Research regarding a broad impact of this resolution has not been conducted in regards to development of this opinion and as a result this opinion is limited only to the Governmental Services Division.

The proposed resolution contains three Whereas sections and seven Resolve sections. The Whereas sections do not accurately reflect the steps taken within the Governmental Services Division regarding the "\$800,000 remaining to be spent" in the development of the Fiscal Year 2015 budget. Based on the information from the Governmental Services Division Director there is a Chain-of-Communication Standard Operating Procedure on what to do in the event of an emergency or urgent communication need. In addition, in this particular instance, it appears that personnel were given instructions to submit the application directly and this did not occur. If this resolution is adopted the second and third Whereas sections should be deleted as they do not accurately reflect the current chain-of-command/communication system in place in the Governmental Services Division. In addition, the correct amount of funding that was subject to reallocation was \$703, 448.00, which should be corrected in the first Whereas.

The Resolve sections of this resolution identify three different sets of actions – directing the process by which communication shall be conducted, out of office delegations, and where the administrative offices of Governmental Services Division will be located. In addition, if any of the above are not followed, then the resolution proposes that the chain-of-command system is "stopped."

Communication

The resolution proposes that "important" communication be sent by 9:00 a.m. and that a return receipt from the recipient be sent within two hours. Supervisors and others in the chain-of-

command must have the Outlook out-of-office rule turned on when they are ill or on vacation. And finally that the Governmental Services Division Director must return phone calls.

The actions requested in the resolution are administrative actions regarding day-to-day functions of an office. The suggested administrative processes do not take into account the existing protocols the Governmental Services Division already has in place and which appear to be working appropriately. The division has a clear communication protocol for emergency actions which allow for exceptions to the chain-of-command. In addition, the division has a hierarchy of responsiveness which relies on those closest to the issue to respond to contacts with clients and directions for the contacting those next in the hierarchy. The purpose of this process is to resolve the situation as quickly as possible by those closest to the knowledge and information regarding the activity.

The Tribe has, in every office, a phone, voicemail and e-mail system for contacting and/or leaving messages. Further, some employees are issued mobile phones for work use to respond to questions or receive voicemails. Finally, voicemail and e-mail are accessible from any mobile phone or internet connection.

The resolution proposes that emergency actions must be noticed before 9:00 a.m. and a return receipt presented. This is presuming this is an e-mail, phone call, voicemail, or paper memo sent. However, emergencies occur at all times of the normal operating hours of the Tribe, as well as after normal operating hours. The programs within the Governmental Services Division are set up to address these emergencies in an appropriate fashion which this directive may interfere with causing disruption in service provision.

It is recommended that these Resolves (numbered 1, 2, and 5) not be adopted. These directives are a daily function of the Governmental Services Division and do not take into account the daily actions of the personnel in the various programs within that division. Further, the directives do not allow for the various emergency, urgent, or programming responsibilities and technical knowledge of the personnel, their supervisors, and area managers. If there is a concern regarding the communication within the Governmental Services Division it would be more appropriate to request the Oneida Business Committee to review the processes within that division and direct that appropriate changes be made.

Out of Office Delegations

The resolution proposes that an e-mail response regarding vacation or personal time is sent, that a “line of responsibility” is established in the event of the absence of a “person in charge” and that “someone” must be available to “handle issues” if the employees in the administrative offices are all ill.

As identified above, the Governmental Services Division has adopted a Standard Operating Procedure identifying a chain-of-command and communication. In addition to the above, every job description clearly identifies supervisors setting up a hierarchy of responsibility. The question is whether the resolution is requesting these actions on behalf of the employees or the clients. Such out-of-office notices will not be sent to clients unless they contact employees. At which point, the client will receive the information from the voicemail message or the e-mail

message set up when the employee is out of the office. If the client comes into the office, they would be referred to another employee or requested to leave a message for the absent employee. However, this would not normally be the case if the employee simply stepped away from his or her desk. They would simply be requested to leave a voicemail message. Those brief times when an employee is in a meeting, stepped out of the office, or on another phone call would not be addressed by these proposed Resolves. As a result, it may appear that an employee did not leave the required notices but would still be unavailable.

The Governmental Services Division is set up such that clients are routed to those who perform the services. It appears that out-of-office messages are set up on both phones and e-mails. It can therefore be presumed that if an employee does not answer, he or she is merely temporarily away from their desk and a message should be left.

It is recommended that these Resolves (numbered 2, 3, and 6) not be adopted. The Resolves do not accomplish any additional actions that are not already in place through job descriptions, program organization within the Governmental Services Divisions or the existing Standard Operating Procedures. However, adoption of the Resolves could result in unnecessary confusion when addressing client and employment related issues arising within the division since the expectation of the Division Director are that those with the expertise in the program should handle programming activities.

Location of Governmental Services Division Offices

The resolution proposes that the Governmental Services Division administration offices must be moved to one of three locations so “Tribal members can find it.” The locations are the Little Bear Development Center, the Norbert Hill Center, or the Skenandoah Complex.

The Governmental Services Offices are located in the Cottages on the Social Services Building/Family Fitness Center grounds. The entrance to the cottages is identified by signage on Packerland Drive. Once in the parking lot, a map of the cottages is posted identifying each program or office located in that area. A significant number of programs provided by the Governmental Services Division are located in the Social Services Building, the Family Fitness Center and the Cottages. The second primary area where Governmental Services programs are located is on the Cultural Heritage grounds off Hillcrest Drive/County FF. Finally, there are scattered programs such as the Oneida Library and recreation facilities located in various housing subdivisions.

The three identified locations are likely to have space for the three positions in the Governmental Services Division administration offices. In addition, all three locations have meeting space available for program meetings. There is a cost to moving staff between buildings, for example - Department of Public Works regarding equipment and furniture, MIS in reassigning phones and printer sharing, as well as staff down-time during the move. However, these costs are not extraordinary. Further, it is not clear if moving the administrative offices will make the personnel easier to locate as the three locations do not offer signage for individual programs within the buildings as the current location does. Finally, there is no indication that the offices are currently difficult to locate, or that members typically physically go to an office and not use the available phone or e-mail systems or U.S. mail.

“Stopping” Chain-of-Command

The final Resolve of this resolution directs that “if this ever happens again” that the Governmental Services Division can no longer use the chain-of-command system. This Resolve is not clear as to what “this” is referring to in regards to happening again. It is possible this refers to not responding to phone calls, not submitting a budget request timely, not setting an out-of-office notice, not sending a time sensitive e-mail before 9:00 a.m., not responding to an e-mail with a receipt within two hours, or if all three employees in Governmental Services Administration are simultaneously out of the office because of illness.

Given the supporting Whereas’ in the resolution and the content of the Resolves, this appears to be a fairly harsh response to any potential misstep from the directions in the resolution. Notwithstanding that, it is not clear what the alternatives are to the chain-of-command system within the Tribe as a whole. As identified above, the Governmental Services Division is made up of a significant number of programs and services that are grouped together under program directors and area managers. These positions in turn report to the Division Director. If this system is no longer available, this would result in approximately 300 employees reporting to the Division Director comprising over 50 programs from libraries and museums, to arts, culture and language, to transportation, to name a few. While it may be possible to manage such a diverse array of services, it is likely to result in delays and confusion given the amount of time necessary to devote to simple things such as time-keeping and budgeting (these activities are currently managed within the nested set of programs or the chain-of-command). This would likely leave little time available to monitor programming activities for the purposes of managing, improving or making modifications to services to meet the needs of clients.

It is recommended that Resolve #7 not be adopted. The Resolve does not clearly identify when it is applicable and may lead to greater confusion in responding to client concerns and/or needs.

Conclusion

There are three Whereas sections in the resolution, The first Whereas should more accurately reflect \$703,448.00 as the funds to be re-allocated back to programs and services. The second two Whereas sections do not reflect the processes and procedures in the Governmental Services Division nor the action which occurred in regards to the Fiscal Year 2015 Budget development.

This resolution proposes seven different directives. Most of those directives are daily activities and processes already addressed by Standard Operating Procedures. In addition, one of the Resolves may result in an unwieldy system that reduces the effectiveness of the services being provided.

This resolution would require a simple majority vote to adopt.

If you have further questions, please contact me.