



Mille Lacs Band of Ojibwe Indians

*Executive Branch of Tribal Government
Office of the Chief Executive*

Via E-mail

December 18, 2024

Joseph Nayquonabe Jr., Commissioner of Corporate Affairs/Corporate Board Chairman
Paul Sam, Corporate Board Member (District I)
Jennifer Gahbow, Corporate Board Member (District II)
Beverly Knowlen, Corporate Board Member (District III)
Bradley Harrington, Corporate Board Member (At-Large)
Leana DeJesus, Corporate Board Member (At-Large)

Re: Interim Appointment of MLCV Chief Executive Officer

Dear Corporate Board Members:

Aaniin. It is my understanding that today you will be meeting to consider whether to appoint Corporate Commissioner Joseph Nayquonabe Jr. as interim Chief Executive Officer of Mille Lacs Corporate Ventures. I write now to express caution, as I do not consider the request permissible under Band law.

As you know, the Mille Lacs Band is a sovereign Native American tribe which derives its authority from the “aboriginal rights of the Band comprised of the Non-Removable Sandy Lake Band of Chippewa Indians, the Rice Lake Band of Chippewa Indians, Snake River Chippewa Indians and the Kettle River Band of Chippewa Indians, and the inherent and aboriginal rights of the people of the Band to self-government.”¹ The Band secondarily derives its authority from the Constitution and Bylaws of the Minnesota Chippewa Tribe, and has organized itself into a division-of-powers form of government under its own statutory law. The Band has used this sovereign authority to establish the Corporate Commission (also known as Mille Lacs Corporate Ventures) as a Corporate Body Politic, which is “both a political subdivision, clothed by federal and tribal law with all the privileges and immunities of the Band, except as expressly limited; and a separately chartered corporation under 16 MLBS § 1101[.]”²

The Commissioner of Corporate Affairs is a unique position because it functions as both a Title 4 Executive Officer,³ owing certain ministerial duties to the Executive Branch of Band government,⁴ and the Chief Operating Officer of Mille Lacs Corporate Ventures.⁵ As Chief

¹ 2 MLBS § 1.

² 16 MLBS § 1101(a).

³ 4 MLBS § 4.

⁴ 16 MLBS § 5.

⁵ See 16 MLBS §§ 103, 111. *But see* BYLAWS OF CORPORATE COMMISSION OF THE MILLE LACS BAND OF CHIPPEWA INDIANS (Mar. 1, 1991), § 3.2.1 (wherein the “President shall be the Chief Executive Officer of the corporation, and shall have the general active management of the business of the corporation besides the duties and powers prescribed by the board or specified by law”).

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Operating Officer, the Commissioner possesses various powers as set forth by Title 16, including the authority to serve as Chairman of the Corporate Board.⁶ The Commissioner is appointed to a four-year term by the Band's Chief Executive and is confirmed by the Band Assembly.⁷ The current Commissioner's term ends on December 31, 2024, and—as of this writing—I have not made a nomination for the upcoming term.

Similar to the Corporate Commissioner, the Corporate Board also enjoys several authorities as delineated by Title 16. But these authorities are not unlimited. For example, the Corporate Board is empowered to “engage in business and economic development endeavors”; “enter any contracts or agreements necessary for business or economic development endeavors”; and “enter into compacts or other agreements with the state or federal government in furtherance of engaging in business or economic development endeavors[.]”⁸ Although Title 16 also grants the Corporate Board “additional powers necessary to carry out” the statute's expressed purposes, such powers must be “specifically enumerated in a set of articles and bylaws” which must be approved by both the Corporate Commission and the Band Assembly.⁹

Having reviewed the Corporate Commission's Charter and Bylaws dated March 1, 1991, I do not see any clause or provision allowing the Corporate Board to appoint an interim Chief Executive Officer. Title 16 is similarly silent and, in my opinion, should not be construed as bestowing such authority by implication. My reasoning is that the drafters of Title 16 clearly stated when they wished to grant the Corporate Board appointment authority. For example, the statute allows the Board to “elect from its membership an individual to serve as the Chief Financial Officer of the Corporation.”¹⁰ In my view, this means that the drafters of Title 16 never intended for the Corporate Board to enjoy a similar power with respect to Chief Executive Officers, interim or not.

There is another reason I do not believe the Corporate Board may appoint an interim Chief Executive Officer: Doing so would expressly violate both the Chief Executive's power to appoint Executive Officers and the Band Assembly's power to confirm them.¹¹ In 2002, Solicitor General Mary Al Balber addressed a similar scenario when Chief Executive Melanie Benjamin made interim appointments to the Executive Officer positions of Assistant Commissioner of Administration and Commissioner of Community Development. The Solicitor General concluded that “[o]nly the Chief Executive can appoint executive officers”¹² (emphasis added) and that the appointments were “subject to confirmation by Band Assembly.”¹³ Therefore, if the Band's current Solicitor General were to address the issue at hand, I am confident he would arrive at the same conclusion.

⁶ 16 MLBS § 103.

⁷ See 3 MLBS § 3(c), 4 MLBS § 6(b), and 16 MLBS § 2.

⁸ 16 MLBS § 106(a)-(c).

⁹ 16 MLBS § 106(f).

¹⁰ 16 MLBS § 103.

¹¹ See 3 MLBS § 3(c), 4 MLBS § 6(b), and 16 MLBS § 2.

¹² SOLICITOR'S OPINION 24-02 (Mar. 26, 2002), p. 3.

¹³ SOLICITOR'S OPINION 24-02 (Mar. 26, 2002), p. 5.

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And while Title 16 does not address the issue of vacancy, Title 4 most certainly does. Namely, Title 4 expressly grants the Commissioner of Administration the authority to “act in the *absence* of any other commissioner” (emphasis added).¹⁴ In December of 2004, the Band faced the exact same scenario as we face today wherein the sitting Corporate Commissioner’s term was set to expire. Chief Executive Benjamin requested a Solicitor’s Opinion to address whether the Commissioner of Administration could assume the duties of the Commissioner of Corporate Affairs after expiration of the term.¹⁵ Although Solicitor General John Swimmer opined that the Commissioner of Administration was *not* statutorily empowered to assume authority, the Solicitor General’s reasoning was flawed. The main rationale for his opinion was that the Commissioner of Corporate Affairs could not be said to be absent when, in reality, the Commissioner’s term had simply expired. I find this interpretation dubious on the grounds that it makes a distinction without a difference, and it was likely for this reason that the Band Assembly chose to annul it.¹⁶

To better crystallize Mr. Swimmer’s distinction between the terms “vacancy” and “absence,” he argued that a vacancy “occurs when a position is unoccupied” and an absence “refers to a state of nonattendance such as being away from a position, or not being present at a position, or missing from a position.”¹⁷ Mr. Swimmer provided no source for his definitions and, again, seems not to have properly applied the term “absent” to a state of affairs in which the Corporate Commissioner could not possibly be present. In my view, if the Corporate Commissioner’s term has run and he or she has not been reappointed, then the position is *perpetually absent* until a new Commissioner is confirmed. To conclude otherwise is to deprive the Band of its one source of statutory authority to temporarily replace a vacant Executive Officer position.

For all of the reasons outlined above, I believe that the request to appoint an interim Chief Executive Officer is not supported by Band law and that, on January 1, all statutory authorities of the Commissioner of Corporate Affairs will necessarily pass to the Commissioner of Administration. In addition to making statutory sense, the Commissioner of Administration’s ascension also makes practical sense because she was both nominated by the Chief Executive and confirmed by the Band Assembly. I much prefer this course than seeing the Corporate Board exercise an attenuated power which is not prescribed by Band law. Therefore, after December 31, I expect that Commissioner of Administration Darcie Big Bear will occupy an interim position on the Corporate Board and temporarily exercise all powers of the Corporate Commissioner under Titles 4 and 16.

As for the dedication and many talents of Joseph Nayquonabe Jr., these are not lost on me. Although I do not support his appointment as interim Chief Executive Officer for the reasons stated herein, I nevertheless consider Commissioner Nayquonabe a valuable asset to the Band

¹⁴ 4 MLBS § 10(a).

¹⁵ Coincidentally, in 1994, then-Commissioner of Administration Melanie Benjamin was herself “temporarily assigned” to Grand Casino Hinckley by Chief Executive Marge Anderson. See EXECUTIVE ORDER 112-94 (Sep. 30, 1995).

¹⁶ See BAND ASSEMBLY MINUTES (Jan. 13, 2005).

¹⁷ SOLICITOR’S OPINION 30-04 (Dec. 21, 2004), p 1.

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and would prefer not to lose him. In the coming weeks, I will be presenting proposed revisions of Titles 4 and 16 to the Band Assembly for their consideration. With the right amount of creativity and hard work exerted by the Band's elected officials, I believe we can arrive at a solution that will set the Band up for many years of economic success.

My preference is to divide Mille Lacs Corporate Ventures into two separate business entities. The first entity, the Corporate Commission, would operate both of the Band's casinos as well as Makwa Global, LLC. This entity would be overseen by the Commissioner of Corporate Affairs, who would also exercise the various ministerial duties set forth by Title 16. The second entity, Mille Lacs Corporate Ventures, would operate the remainder of the Band's business enterprises and would be overseen by a Title 4 Executive Officer called the "Corporate Executive Officer of Mille Lacs Corporate Ventures." Like other Executive Officer positions, this position would be nominated to a four-year term by the Chief Executive and confirmed by the Band Assembly. If given an opportunity to fill this position, I would certainly consider nominating Commissioner Nayquonabe.

I find it important that we have additional discussions on this matter before the end of the year. Please reach out to Deputy Assistant Darla Roache as soon as possible to schedule a meeting.

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Virgil Wind
Chief Executive

CC:

Sheldon Boyd, Speaker of the Assembly
Carolyn Beaulieu, District I Representative
Wendy Merrill, District II Representative
Harry Davis, District III Representative
Jared Miller, Legislative Counsel
Caleb Dogeagle, Solicitor General
Darcie Big Bear, Commissioner of Administration
Chad Ambroday, MLCV General Counsel and Board Secretary
Rachel Wind, MLCV Office Assistant