NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

In the
COURT OF APPEALS
for the
COURT OF CENTRAL JURISDICTION

With the Honorable Chief Justice, Natalie Y. Weyaus, presiding, the following matter came to be heard during an en banc session of this Court.

BEFORE

Honorable Herbert Weyaus, Associate Justice
Honorable Rosalie Noonday, Associate Justice
Honorable Bonita Nayquonabe, Administrative Law Judge
Honorable Ruth Sam, Administrative Law Judge

IN THE MATTER OF: **CASE: 92-CV-5359**

Opinion of the Solicitor General
15-OSG-92

ARGUED: February 16, 1993 **DECIDED: March 24, 1993**

OPINION

OF THE COURT OF APPEALS

OF THE

COURT OF CENTRAL JURISDICTION

IN THE MATTER OF: CASE: 92-CV-5359

The Interpretation of the
Solicitor General 15-OSG-92

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This case was argued on February 16, 1993. Decided on March 24, 1993.

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DECISION:

Solicitor Opinion 15-OSG-92 is annulled. Band Statute 1141-MLC-2, Section 10, does not confer authority on the Secretary of Treasury to issue a stop work order or to order that property be searched, seized or secured when ownership of that property is not vested in the name of the Non-Removable Mille Lacs Band of Chippewa Indians or any of its political subdivisions.

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SUMMARY

In proceedings before the Court of Appeals in and for the Court of Central Jurisdiction to consider the legality of the Opinion of the Solicitor General 15-OSG-92, the Solicitor General opined that Band Statute 1141-MLC-2, Section 10, empowered the Secretary of Treasury to "stop the work of a contractor or secure building materials from use or removal pending an investigation." Opinion of the Solicitor General, at p. 5.

This is the first time that the Court of Appeals has considered the issue of interpreting a Band Statute. We confront this issue in the context of an Opinion of the Solicitor General pursuant to authority conferred by Band Statutes 1143-MLC-4, Section 4.09, and 1142-MLC-3, Section 16.04.01. We have found little guidance in the Band Statutes as to the proper standard of law which applies to this question. Accordingly, it is necessary for the Court of Appeals to announce the proper standard and then to apply that standard to the interpretation offered by the Solicitor General.

In an opinion by Weyaus, J., joined by Weyaus, Ch. J., and Noonday, J., Nayquonabe, J. and Sam, J., it is held that Band Statute 1141-MLC-2, Section 10, does not authorize the Secretary of Treasury to issue a stop work order or to order that property be searched, seized or secured when ownership of that property is not vested in the name of the Non-Removable Mille Lacs Band of Chippewa Indians or any of its political subdivisions. Accordingly, the Opinion of the Solicitor General (15-OSG-92) is annulled.

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APPEARANCES OF COUNSEL

James Franklin Pence, Solicitor General, argued the cause.

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OPINION OF THE COURT

Justice H. Weyaus delivered the unanimous opinion of the Court.

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In this case, we must decide whether Band Statute 1141-MLC-2, Section 10, authorizes the Secretary of Treasury to issue a stop work order to a contractor or to order that his/her building materials be secured from use or removal from Band lands, during the pendency of a Secretarial investigation. We conclude that Section 10 does not confer such power and we therefore annul the Opinion of the Solicitor General (15-OSG-92).

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FACTS

The Solicitor General in and for the Non-Removable Mille Lacs Band of Chippewa Indians issued Opinion of the Solicitor General (15-OSG-92) on December 23, 1992. In this opinion, the Solicitor General construed a Band Statute concerning the scope of powers and duties of the Secretary of Treasury. Band Statute 1141-MLC-2 Section 10 provides that the Secretary-Treasurer shall have the following general powers and duties in administering the financial affairs of Band government:

> Section 10.01. To superintend and manage all Fiscal Operations, planning and budgeting of the Non-Removable Mille Lacs Band of Chippewa Indians as authorized by the Band Assembly;
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> Section 10.02. To enforce on behalf of the Band, all judgments and claims rendered in its favor;
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> Section 10.03. To receive and receipt for all monies paid into the Band Treasury and safely keep the same until lawfully disbursed by formal appropriation;
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> Section 10.04. To have powers of investigations of financial irregularity;
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> Section 10.05. To require the production of such books, accounts, documents and property under any lawful financial inquiry in all things that will aid him or her in the performance of his or her duties;
>
> Section 10.06. To levy, impound or attach any financial account of the Non-Removable Mille Lacs Band of Chippewa Indians or any political subdivision thereof to prevent serious financial jeopardy or acts in violation of law. This authority shall not be exercised to contravene any lawful acts of the Band Assembly;
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> Section 10.07. To issue Secretarial orders to implement decisions concerning matters of the fiscal affairs of the Band consistent with the powers herein delegated. Such written order shall be in uniform format, numbered consecutively and have expiration dates;

> Section 10.08. To nominate in conjunction with the Chief Executive a suitable person to act as the Commissioner of Finance;
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> Section 10.09. The Commissioner of Finance shall be the chief administrative officer of the Office of Management and Budget pursuant to the directives of the Band Assembly. In addition, the Commissioner of Finance shall have authority as conferred pursuant to Band Statute 1085-MLC-37;
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> Section 10.10. Both the Secretary-Treasurer and the Commissioner of Finance shall post fidelity bonds in favor of the Non-Removable Mille Lacs Band of Chippewa Indians in an amount satisfactory to the Band Assembly;
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> Section 10.11. The Secretary of Treasury shall coordinate with the Commissioner of Finance for the Office of Management and Budget, to ensure that financial planning and operations are consistent.

In the Opinion, the Solicitor General reasoned that, in order to give full force and effect to Section 10, the power to "impound any financial account" must be expanded under certain facts[1] to include not only money but also those things that are interchangeable with money. Opinion of the Solicitor General 15-OSG-92 at p. 4. The Solicitor General also argues that when the Secretary-Treasurer was given the power to impound accounts, he was given the power to seize money in those accounts. Id. at 5.

The Solicitor General asserts that money is nothing more than what is called a medium of exchange used as a practical replacement for barter in order to simplify the flow of goods and services. Id. He also asserts that once the Secretary of Treasury impounded the accounts, it was essential to stop the contractor's work and to secure the materials used by the contractor in the performance of that contractor's contractual

[1] The facts which gave rise to the issuance of Opinion of the Solicitor General (15-OSG-92) are the subject of an action pending in the district court of the Court of Central Jurisdiction. In order not to prejudice any rights of any party to that proceeding, this Court will refrain from reciting the facts which the Solicitor General relies upon to support his opinion that the power to "impound any financial account" includes not only money but also those things that are interchangeable with money.

obligations. Id. Accordingly, the Solicitor General concluded that under Band law, the Secretary-Treasurer is empowered to stop the work of a contractor or to secure building materials from use or removal, pending an investigation. Id.

STANDARD APPLICABLE TO INTERPRETING A BAND STATUTE

It is a basic canon of law that when a legislative body enacts an authoritative written text as law, the particular language of the text is always the starting point on any question concerning the application of that law. This rule is commonly referred to as the **"Plain Meaning Rule"** of statutory construction. We adopt this canon of statutory construction that states "the plain meaning of legislation should be conclusive, except in the rare cases in which the literal application of the statute will produce a result demonstrably at odds with the intentions of its drafters. Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982). In such cases, the intention of the drafters or the meaning of the statute, rather than the strict language, controls.

Consistent with this canon of law, we also believe that the meaning of a statute must, in the first instance, be sought in the language in which the legislation is framed, and if that is plain, the sole function of courts is to enforce it according to its terms. Caminetti v. United States, 242 U.S. 470, 485 (1917). In this regard, we will follow those cases of federal law holding that the starting point in every case involving construction of a statute is the language itself. Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975)(Powell, J., concurring).

Next, we adopt the rule that assumes that the legislative purpose of a Band statute is expressed by the ordinary meaning of the words used therein. See American Tobacco

Co. v. Patterson, 456 U.S. at 63, 68 (1982). If one questions the application of the plain meaning rule to a provision of a Band statute, he/she must show either that some other section of the Band statute expands or restricts its meaning, i.e., that the provision itself is repugnant to the general purview of the Band statute, or that the Band statute considered in pari materia with other Band statutes, or with the legislative history of the subject matter, imports a different meaning. Janowski v. International Bhd. of Teamsters, Local 710 Pension Fund, 673 F.2d 931 (7th Cir. 1982); State v. Goldschmidt, 494 F. Supp. 93 (D. Me. 1980).

Accordingly, if the language of a Band statute is plain, unambiguous and uncontrolled by other parts of the Band statute or other Band statutes upon the same subject, this Court will not give it a different meaning. But, we will depart from the customary meaning of words when it is obvious to us from the Band statute itself that the Band Assembly intended that it was used in a sense different from its common ordinary meaning.

Next, we must determine whether statutory construction is a matter of law for the courts to decide or a question of fact for the jury to decide. We acknowledge that issues concerning what a statute means or what the legislative body intended are essentially issues of fact, even though they are decided by a judge and not a jury. United States v. Atlantic Richfield Co., 612 F.2d 1132 (9th Cir. 1980). As an issue of fact, a court should never exclude relevant and probative evidence from consideration. Id. While we recognize that issues of fact are critical to determining the meaning of a Band statute, we hold that issues of statutory construction are issues of law to be decided by the court and not the jury. We think this view is well supported in federal case law.

We also believe that before the true meaning of a Band statute can be determined in those circumstances where there is genuine uncertainty concerning its application, that consideration must be given to the problem in our society to which the Band Assembly addressed itself. As such, prior considerations of this problem by the Band Assembly are important, as well as the findings and determinations of the Band Assembly, the legislative history of the statute and how the statute has been administered in practice. See United States v. Monia, 317 U.S. 424 (1943).

In this regard, we are mindful of the fact that the structure of tribal government existing on all lands subject to the territorial jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians is separation of powers. To our knowledge, it is the only tribal separation of powers government in operation in the Indian country of Minnesota. Consistent with this structure of separation of powers, it is the function of the Band Assembly to make the laws, but for the Court of Central Jurisdiction to finally and authoritatively interpret what the law says. More importantly, it is not the function or duty of this Court to issue opinions which invade the province of another branch of government in disregard of the separation of powers structure of government.

Therefore, in this case and in all future statutory construction cases this Court will first look to the Band statutes for guidance when a question arises concerning the applicability of a Band statute or the "intent" or "meaning" of that statute. Band Statute 1141-MLC-2, Section 32, provides in pertinent part, that the Court of Central Jurisdiction shall "liberally construe the provisions of this Band statute so as to provide for the full force and effect of the purposes therein stated." But, this standard does not apply without qualification as it is a well established principle of the law of statutory

construction that the law favors rational and sensible construction. American Tobacco Co. v. Patterson, 456 U.S. at 71.

We believe this principle should apply to the construction of Band statutes and that the Solicitor General should be mindful of it when he/she engages in the same process. We think this qualification is both reasonable and rational. Accordingly, we adopt the basic principle of statutory construction that the unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a more reasonable result. See Commissioner v. Brown, 380 U.S. 563 (1965).

One final issue to be addressed concerns the method this Court will follow in construing a statute. As this case illustrates, it is difficult to know with certainty what the drafters of a Band statute intended years after the statute was created. We note that there are two approaches used by courts. One approach is to determine the **"meaning of a statute"**[2] while another approach is to determine **"legislative intent."**[3]

We suspect that the meaning of a statute lies deeper than the actual words of the statute and that it involves questions of judgment. Clearly, reasonable minds can differ regardless of which method is applied. In this light, we have come to recognize that court opinions which follow "meaning" sometimes emphasize that the "words" of a legislature themselves are the most reliable source from which to ascertain legislative intent. We also acknowledge that other courts have sought to evidence the "intent" of a statute in the "equity" of the statute and have found it necessary to completely disregard

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[2] The phrase "meaning of a statute" means a method of analysis of a statute from the general public's point of view, i.e., that which looks to what members of the general public would understand the statute to mean.

[3] The term "legislative intent" means a method of analysis that intent can be derived from the members of the Band Assembly which enacted the statute or from the legislative history of the band statute or the findings and determinations section of the statute.

statutory language in order to follow legislative intent. We think the better view is not to adopt a bright line method, but rather to utilize the method ("intent" vs. "meaning") which achieves a liberal and reasonable interpretation of the statute consistent with Band Statute 1141-MLC-2, Section 32.

APPLICATION OF THE STANDARD TO BAND STATUTE 1041-MLC-2, SECTION 10

A plain reading of Section 10.06[4] clearly indicates that the power of the Secretary of Treasury is "to levy" or "to impound" or "to attach." Moreover, it is equally clear that this Section limits such power to "any financial account of the Non-Removable Mille Lacs Band of Chippewa Indians or any political subdivision thereof . . ." (emphasis added). On its face, this statutory provision makes a distinction between property owned by the Band and property owned by private individuals.

Before this Court will properly consider accepting an invitation to take liberty with any statutory language, we think there should be, at least, no deprivation of interests encompassed by Article XIII of the Minnesota Chippewa Tribe Constitution or Band Statute 1140-MLC-1, Section 8. In addition, there should be unmistakable support in other provisions of the Band statute, the legislative history or the structure of the legislation itself.

We are asked to read into Band Statute 1141-MLC-2, Section 10.06, additional Secretarial powers (to stop work and to secure property) which are not evident on the

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[4] We are mindful of the words of the United States Supreme Court when it said "to let general words draw nourishment from their purpose is one thing. To draw on some unexpressed spirit outside the bounds of the normal meaning of words is quite another. . . . After all, legislation when not expressed in technical terms is addressed to the common run of men and women and is therefore to be understood according to the sense of the thing, as the ordinary man and woman has a right to rely on the ordinary words that are addressed to any man or woman." Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 617-618 (1944).

face of this section. It is clear to this Court that this Band Statute was evidently drawn with care. Further, the language of Section 10.06 is plain and unambiguous. In fact, we think it would take some ingenuity to create some ambiguity in this statutory provision.

What the Solicitor General asks is not a construction of a statute but, in effect, an enlargement of it by this Court, so that what was omitted presumably by inadvertence may be included within its scope. We decline the Solicitor General's invitation to read such an expansion into the statute. We take judicial notice of those federal cases which apply the principle of construction that when a legislature delineates specific authorities, to levy, impound or attach, it meant to extend only those authorities identified. We agree with those cases.

If the Band Assembly, in its wisdom, decides to grant powers to the Secretary to stop work or secure property, it is within their province to so do. This Court declines to read such powers into Section 10.06 because it is not the function of this Court to make law. Further, to do so would implicate protected private interests under the Constitution of the Minnesota Chippewa Tribe and the civil rights law of the Band. In addition, we note that when protected interests are implicated, the right to some kind of prior hearing is paramount.

Analysis of the result of the Solicitor's opinion leads to the inescapable conclusion that Secretarial actions under Section 10.06 are actions under color of Band law. While no protected interests are implicated if the stop work and secure orders effect only Band officers or employees in the performance of their duties or Band property, the same is not true when the recipient of those orders is an individual person. The Solicitor General's opinion fails to recognize this distinction. The private property interests of individual persons on lands subject to the Band's jurisdiction is protected by both federal

law and band law. See 25 U.S.C. §§ 1301-1341; Band Statute 1140-MLC-1, Section 8. The fact that an individual happens to be on such lands pursuant to a contractual agreement with the Band or any of its political subdivisions does not convert personal property into government property for purposes of Section 10.06.

We cannot ignore the fact that Section 10.06 does not contain any provision to accord a private person of notice and a hearing prior to the seizure of any property rights under Section 10.06. We take judicial notice of the Band Statute regarding exclusions from Band lands and note that that statute contains notice and hearing provisions except in emergency situations. We also note that other Band statutes provide notice and hearing provisions when an officer of the Band government take action under color of Band law.

We must unequivocally state that the procedural protections of property found in Article XIII and Section 8 of the Band's civil rights statute are safeguards of the security of interests for all persons on Band lands. But, just like property interests of individuals are not created by the United States Constitution, property interests are not created by the Constitution of the Minnesota Chippewa Tribe. See Board of Regents v. Roth, 408 U.S. 564, 577 (1972). Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as the terms and conditions of the unwritten cultural law of the Band or from Band statutes. Cultural law recognizes individual property rights. Both federal law and Band law preclude the invasion of property rights, under color of Band law, absent notice and opportunity to be heard. The Solicitor General's opinion failed to contemplate the possibility that an exercise of Secretarial power against an individual could constitute an invasion of private

property rights when prior notice and opportunity for hearing have not been accorded to that individual.

For the foregoing reasons, we hold that the Opinion of the Solicitor General (15-OSG-92) must be annulled.

IT IS SO ORDERED.

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CONDUCT OF LEGAL OFFICERS APPEARING BEFORE THE COURT

This Court is founded upon the unwritten cultural principle of **sha-wa-ni-ma**. Included among the attributes of **sha-wa-ni-ma** is the Anglo word "respect." We would point out to any legal officer who appears before this Court that their conduct must conform to the principle of **sha-wa-ni-ma**. In the event that a legal officer's conduct falls short of this standard, it would be more than appropriate for this Court to consider disciplinary action and sanctions.

The conduct of the Solicitor General at the hearing in this matter on February 16, 1993, fell below the standard of conduct expected of a legal officer before this Court. The Solicitor General is hereby put on notice that any further conduct which is offensive to the principle of **sha-wa-ni-ma** will result in appropriate disciplinary action, including sanctions, after notice and opportunity to be heard is accorded to any legal officer. Let all legal officers licensed to practice law before this Court be placed on notice of the high regard that this Court holds for this principle.

IT IS SO ORDERED.

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In The Matter Of:

Case: 93-CV-5359

Opinion of the Solicitor General
15-OSG-92

IT IS SO ORDERED, ADJUDGED AND DECREED

Herbert Weyaus — **Herbert Weyaus**

Rosalie Noonday — **Rosalie Noonday**

Natalie Y. Weyaus — **Natalie Weyaus**

Bonita K. Nayquonabe — **Bonita Nayquonabe**

Ruth Sam — **Ruth Sam**

OFFICIAL SEAL OF THE COURT