

Ordinance 70-08

An Ordinance adding Chapter 7 to Title 6 of the Mille Lacs Band Statutes Annotated (Government Employees) for the purpose of providing indemnification of elected and appointed officials.

The District III Representative introduced the following Bill on the 21st day of February, 2008. On February 29, 2008, the Bill was vetoed and compromise was held on March 6th, March 13th, and on March 18, 2008. On March 18, 2008 the District III Representative re-introduced the following Bill.

PREAMBLE

It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of adding Chapter 7 to Title 6 of the Mille Lacs Band Statutes Annotated (Government Employees) to be entitled "Indemnification."

CHAPTER 7

INDEMNIFICATION

§ 1. Definitions

For purposes of this Chapter:

- (a) "Act or omission in the official capacity of a Band Official" means any act or omission under color of such person's authority as a Band Official, without regard to any ultimate determination regarding the limits of such person's actual authority as a Band Official.
- (b) "Band governing body" means the Band's Chief Executive and Band Assembly.
- (c) "Band Official" means (i) each person holding the elective office as a member of the Band Assembly or Chief Executive of the Non-Removable Mille Lacs Band of Chippewa Indians, and (ii) any person serving in an appointive position with the Legislative Branch, Executive Branch, or Judicial Branch of the Band, who has been approved to receive indemnification pursuant to this Chapter by a majority of the Band governing body pursuant to Section 3.
- (d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding relating to or arising out of a person's acts or omissions as a Band Official, but shall not include any proceeding initiated by the Band.
- (e) "Special legal counsel" means legal counsel selected by a majority of the Band governing

body, who is not representing the Solicitor General whose indemnification is in issue.

§ 2. Indemnification mandatory; standard.

(a) The Band shall indemnify any present or former Band Official made or threatened to be made a party to a proceeding by reason of any alleged act or omission of such person in his or her official capacity as a Band Official against judgments, penalties, fines, settlements, and reasonable expenses, including attorneys fees and disbursements, incurred by such present or former Band Official in connection with the proceeding, if, with respect to such alleged acts or omissions, the present or former Band Official:

(1) has not been indemnified by another organization or entity for the same liability described in the preceding paragraph with respect to the same acts or omissions;

(2) acted in good faith and without actual knowledge that such act or omission was beyond his or her authority as a Band Official;

(3) received no improper personal benefit;

(4) in the case of a criminal proceeding, did not have reasonable cause to believe the act or omission was unlawful; and

(5) reasonably believed that the act or omission was in the best interests of the Band.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria in this Section.

§ 3. Advances.

If a present or former Band Official is made or threatened to be made a party to a proceeding by reason of any alleged act or omission in the official capacity of such person as a Band Official, such present or former Band Official is entitled, upon written request to the Band, to payment or reimbursement by the Band of reasonable expenses, including attorneys fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

(1) upon receipt by the Solicitor General of (a) a written affirmation by the person of a good faith belief that the criteria for indemnification in Section 2 have been satisfied and (b) a written undertaking by the person to repay the amounts paid or reimbursed by the Band, if it is definitively determined by the Solicitor General, or the Court of Central Jurisdiction upon appeal pursuant to Section 5, that the criteria for indemnification have not been satisfied; and

(2) after a determination, pursuant to Section 5, by the Solicitor General or Court of Central Jurisdiction, that the facts then known would not preclude indemnification under this section.

The written undertaking required by clause (1) shall be an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

If the person seeking an advance under this section is the Solicitor General, the Solicitor General shall submit the documents described in clause (1) to special legal counsel selected by a majority of the Band governing body. Special legal counsel shall then make the initial determination described in clause (2), subject to appeal to the Court of Central Jurisdiction pursuant to Section 5.

If the person seeking an advance under this section is a former or present appointed official, it shall be the right of the majority of the Band governing body to decide whether such indemnification shall be approved.

§ 4. Reimbursement to witnesses.

This section does not require, or limit the ability of, the Band to reimburse expenses, including attorneys fees and disbursements, incurred by a person, including a present or former Band Official, in connection with an appearance as a witness in a proceeding at a time when such person has not been made or threatened to be made a party to a proceeding.

§ 5. Determination of eligibility.

(a) Determinations as to (i) whether the criteria set forth in Section 2 concerning indemnification of a present or former Band Official, other than the Solicitor General, have been satisfied, or (ii) whether such present or former Band Official is entitled to advances under Section 3 shall be made:

(1) by the Solicitor General; or

(2) if an adverse determination is made by the Solicitor General, by the Court of Central Jurisdiction, upon application of the present or former Band Official and notice as the Court requires.

(b) Determinations as to (i) whether the criteria set forth in Section 2 concerning indemnification of a present or former Solicitor General have been satisfied, or (ii) whether a present or former Solicitor General is entitled to advances under Section 3 shall be made:

(1) by special legal counsel; or

(2) if an adverse determination is made by special legal counsel, by the Court of Central Jurisdiction, upon application of the present or former Solicitor General and notice as the Court requires.

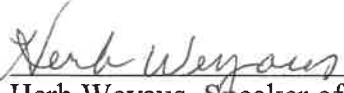
§ 6. Indemnification of other persons. This section does not limit the power of the Band to indemnify other persons.

§ 7. Scope. This section does not apply to any proceedings to resolve conflicts within the Executive, Legislative or Judicial Branch nor does it apply to any proceedings between the three (3) branches of Band government, as described in Title 4, Section 19.

Ordinance 70-08

Re-Introduced to the Band Assembly on this
Eighteenth day of March in the year
Two thousand eight.

Passed by the Band Assembly on this
Eighteenth day of March in the year
Two thousand eight.



Herb Weyaus, Speaker of the Assembly

APPROVED

Date: March 18, 2008



Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND