



THE MILLE LACS BAND OF
OJIBWE INDIANS
Legislative Branch of Tribal Government

LEGISLATIVE ORDER 34-22

**A LEGISLATIVE ORDER AMENDING OPINION OF THE
SOLICITOR GENERAL 98-19**

- WHEREAS, pursuant to 3 MLBS § 3(a), the Non-Removable Mille Lacs Band of Ojibwe Band Assembly possesses the power to “enact laws which promote the general welfare of the people[;]” and
- WHEREAS, pursuant to 3 MLBS § 3(g), the Band Assembly possesses the power to “perform all other legislative functions conferred by the provisions of Article VI of the Constitution of the Minnesota Chippewa Tribe[;]” and
- WHEREAS, pursuant to 3 MLBS § 28, the Band Assembly “may issue Legislative Orders on any subject matter within the Legislative Branch of government pursuant to authority conferred by this Title and the Constitution of the Minnesota Chippewa Tribe[;]” and
- WHEREAS, under 4 MLBS § 18(d)(2), an Opinion of the Solicitor General (“Opinion”) “shall have the force of law and shall be binding until . . . amended pursuant to legislative order of the Band Assembly[;]” and
- WHEREAS, under 3 MLBS § 18, a time frame of “five (5) calendar days” is provided for “annulment” of an Opinion but amendment of an Opinion is not subject to any time frame; and
- WHEREAS, under 3 MLBS § 31 and 4 MLBS § 25, “amend[ment]” of an Opinion requested by the “Speaker of the Assembly or the Band Assembly” or the “Chief Executive[.],” respectively, occurs only when “amended . . . pursuant to the enactment of the law[;]” and
- WHEREAS, although 3 MLBS § 29 states that “no laws shall be enacted except by bill[.]” 3 MLBS § 28 states that “[a]ll Legislative Orders shall have the full force of law of the Band until amended or repealed[;]” and
- WHEREAS, under the canon of statutory construction (“canon”) *expressio unius est exclusio alterius*, the expression of one thing implies the exclusion of others; and

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WHEREAS, because 4 MLBS § 18(d) requires that amendments to Opinions be performed via Legislative Order, the amendment of Opinions by the use of a bill or resolution is precluded, though any law enacted via bill that contradicts an Opinion would by its fundamental nature overrule the Opinion; and

WHEREAS, the harmonious-reading canon requires that, when possible, the provisions of law should be interpreted in a way that renders the provisions compatible rather than contradictory; and

WHEREAS, the provisions of 4 MLBS § 18(d)(2), 3 MLBS § 31, and 4 MLBS § 25 may be interpreted to be compatible by interpreting “amended pursuant to Legislative Order of the Band Assembly” to constitute “amend[ment] by the Band Assembly pursuant to the enactment of the law” in the limited context of amending an Opinion; and

WHEREAS, although the language in 3 MLBS § 29 stating that “no laws shall be enacted except by bill” is contradictory to 4 MLBS § 18(d)(2), the canons provide that, when there is a conflict between a general provision and a specific provision, the specific provision prevails; and

WHEREAS, 4 MLBS § 18(d)(2) specifically requires that an “amend[ment]” to an Opinion be done via “Legislative Order[.]” rather than via a bill; and

WHEREAS, under the harmonious-reading canon, this specific provision of 4 MLBS § 18(d)(2) prevails over the general provision of 3 MLBS § 29; and

WHEREAS, under *In the Matter of the Interpretation of the Solicitor General 15-OSG-92, 92-CV-5359 (1993)* (“*Interpretation of the Solicitor General*”), decided by the Court of Central Jurisdiction, the plain and ordinary meaning of the language of a statute should be used to determine the effect of the statute; and

WHEREAS, the plain and ordinary meaning canons refer to the generally accepted dictionary definitions of the words involved; and

WHEREAS, the definitions of the words involved in the relevant sections of law support the explicit grant of authority to amend Opinions by Legislative Order; and

WHEREAS, under *Interpretation of the Solicitor General*, when Band law is unclear, the law should be interpreted by a method that “achieves a liberal and reasonable interpretation of the statute[;]” and

WHEREAS, interpreting 4 MLBS § 18(d)(2), 3 MLBS § 31, and 4 MLBS § 25 in the manner laid out above achieves a liberal and reasonable interpretation of Band law; and

WHEREAS, Opinion 98-19 declared that a “calendar day” is the equivalent of a “working day[;]” which would not include weekend days or holidays in its meaning; and

WHEREAS, the terms “calendar day,” “working day,” and “business day” are used repeatedly in Band law; and

WHEREAS, the case law cited by Opinion 98-19, *Sherwood v. American Sugar Refining*, 8 F.2d 586 (2d Cir. 1925) (“*Sherwood*”), was a case in admiralty law, which is not applicable in the context of the time frame in which the Chief Executive may sign or veto legislation under 3 MLBS § 17(c); and

WHEREAS, in *Sherwood* at 587, the analysis was of a charter for rental of a boat at a rate on the basis of “[p]er working day . . . [and i]f used on Sundays, same rate to apply[;]” and

WHEREAS, in *Sherwood* at 587, the court noted that the charter for rental was eventually concluded “on a basis of calendar days [rather than] a day of eight hours[;]” and

WHEREAS, Opinion 98-19 at p. 2 quoted *Sherwood* when it stated that “[t]he term **calendar day** is ‘equivalent to . . . “working days”’” (emphasis in original); and

WHEREAS, the full text from *Sherwood* at 588 reads “[t]he expression ‘calendar day’ we think is equivalent to another expression often used in admiralty, ‘working days[;]’” and

WHEREAS, the *Sherwood* case’s use of “calendar day” was incorrectly interpreted in Opinion 98-19; and

WHEREAS, the *Sherwood* case appears to have been selectively cited to provide a specific result of excluding weekends and holidays from the Solicitor General’s definition of “calendar day[;]” and

WHEREAS, Opinion 98-19 cited a Second Circuit case (covering New York, Vermont, and Connecticut), rather than more appropriate authority available at the time of Opinion 98-19’s issuance such as, e.g., *Northern Pac. Ry. Co. v. U.S.*, 251 U.S. 326, 337 (1920) (differentiating between “working days” and “calendar days”) (Pitney, J., Concurring); *Abernathy v. Perry*, 869 F.2d 1146, 1148 (8th Cir. 1989) (differentiating between “working days” and “calendar days”); *Duffy v. Village of Princeton*, 240 Minn. 9, 15 (1953) (differentiating between “working days” and “calendar days”); and

WHEREAS, the Court of Central Jurisdiction adopted the plain meaning rule of statutory interpretation in *Interpretation of the Solicitor General*, which provides that the language of a statute should be interpreted using the ordinary grammatical meaning of the words within the statute; and

WHEREAS, according to relevant case law and *Black's Law Dictionary*, "calendar day" refers to a 24-hour period, irrespective of holidays and weekends; and

WHEREAS, Band statutes use different terms when the legislative intent is to limit the inclusion of holidays and weekends, namely "working days" and "business days[;]" and

WHEREAS, interpreting "calendar day" to mean "working day" ignores the well-established legal and colloquial meaning of a 24-hour period, irrespective of holidays and weekends, and such interpretation goes against the relevant case law and established methods of statutory interpretation.

NOW, THEREFORE, BE IT ORDERED, that Opinion 98-19 is hereby amended to conform with the cited authority and analysis above.

BE IT FURTHER AND FINALLY ORDERED, that unless otherwise defined in Band law, a "calendar day" means a 24-hour period, including holidays and weekends.

WE DO HEREBY CERTIFY that the foregoing legislative order was duly concurred with and adopted at a special session of the Band Assembly in Legislative Chambers assembled, a quorum of legislators being present, held on November 17, 2021, at Nayahshing, Minnesota by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

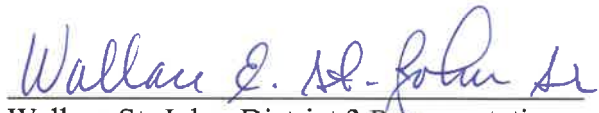
DATED, at Vineland, Minnesota, from within the sovereign territory of the Non-Removable Mille Lacs Band of Ojibwe, this 17th day of November, 2021.

Effective Date: Immediately upon majority vote of the Band Assembly pursuant to 3 MLBS § 30(b).


Sheldon Boyd, Speaker of the Assembly


Virgil Wind, District 1 Representative


Marvin Bruneau, District 2 Representative


Wallace St. John, District 3 Representative

APPROVED AS TO FORM, EXECUTION, AND NUMBERING:


Caleb Dogeagle
MLB Solicitor General

OFFICIAL SEAL OF THE BAND

