



THE MILLE LACS BAND OF
OJIBWE INDIANS

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Office of the Solicitor General


OPINION OF THE SOLICITOR GENERAL
No. 37-13

The Speaker of the Band Assembly has inquired about the legal underpinning of the legislative practice of providing individual Band member loans and/or grants.¹ The Band's inherent, aboriginal right to self-govern is manifested within the "Constitution of the Minnesota Chippewa Tribe[, which represents] the supreme law of the Band."² The former MLB Reservation Business Committee could exercise several enumerated constitutional powers,³ and the Band Assembly has since assumed that historic role.⁴ One such power involved the ability "[t]o administer any funds within the control of the Reservation," including "expenditures from [such] funds for . . . Reservation purposes."⁵ The Business Committee could only authorize expenditures "in accordance with a budget, duly approved by resolution in legal session."⁶ Furthermore, "the amounts so expended [had to] be a matter of public record at all reasonable times."⁷

Subsequently, the Band Assembly divided its power amongst a tripartite form of government pursuant to various statutory enactments.⁸ In relation to fiscal affairs, the Band Assembly has expressly maintained the elemental power "[t]o appropriate all Band revenue."⁹ The Band Assembly has presumably reserved unto itself, at least in part, the derivative constitutional authority to expend tribal funds,¹⁰ having nowhere exclusively delegated such power.

The District Representatives have not been conferred any individual power to conduct financial affairs.¹¹ Therefore, any such power must instead be discharged in accordance with the prescribed constitutional procedure.¹² As a conceivable check on this power, the Secretary-Treasurer may investigate alleged instances of financial irregularity,¹³ and may consequently "issue Secretarial Orders to implement decisions concerning matters of the fiscal affairs of the Band."¹⁴

More commonly, the Chief Executive is charged with "faithfully and impartially execut[ing] . . . resolutions of the Band,"¹⁵ and each executive officer, including the Chief Executive,¹⁶ can "authorize the expenditure of all appropriated funds within their subject matter jurisdiction."¹⁷ Yet, to reiterate, the Band Assembly may permissibly occupy a complementary role as concerns direct appropriations to the membership in the form of loans and/or grants. The Band Assembly must supplement, not subsume, executive branch programs lest it create an unnecessary separation of powers dilemma.¹⁸ And, in doing so, the Band Assembly must act collectively pursuant to the Constitution.


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¹ 3 MLBSA § 29, available at http://www.millelacsband.com/Page_BandStatutes.aspx.

² 2 MLBSA § 1.

³ REVISED CONST. & BYLAWS OF THE MINNESOTA CHIPPEWA TRIBE (hereinafter CONSTITUTION), art. III, § 2, available at http://www.millelacsband.com/Page_BandStatutes.aspx.

⁴ 3 MLBSA § 1.

⁵ CONST., art. VI, § 1(b).

⁶ *Id.*

⁷ *Id.*

⁸ 2 MLBSA §§ 3-4.

⁹ 3 MLBSA § 2(b).

¹⁰ 3 MLBSA § 2(d, g) (citing CONST., art. VI).

¹¹ *Id.*, § 8(a).

¹² *Supra* note 5.

¹³ 3 MLBSA § 7(d).

¹⁴ *Id.*, § 7(g).

¹⁵ 4 MLBSA § 6(a).

¹⁶ *Id.*, § 4.

¹⁷ *Id.*, § 7(c).

¹⁸ *Supra* note 8.