



No Review  
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MILLE LACS BAND OF CHIPPEWA INDIANS  
Judicial Branch of Tribal Government

Opinion of the Solicitor General  
04-056-83

TO: Arthur Gahbow, Chief Executive  
FROM: Jay Kanassatega, Solicitor General  
SUBJECT: Legality Review of Administration Policy Board Minutes for the period April 29, 1983 through June 9, 1983.

You have asked for an opinion concerning the legality of certain decisions of the Administration Policy Board and all other Policy Boards with regard to any potential violations of Band Statute or Federal or State statutes, rules or regulations. You have also requested a weekly review of the minutes to determine potential legal problems as an on-going function of this office. The following is submitted as a review of the minutes to date in partial compliance with your request.

Policy Board Meeting - April 29, 1983

No violations of law are apparent.

Policy Board Meeting - May 6, 1983

The motion by Leonard Sam to "transfer the M.C.T./D.N.R. personal to the B.I.A./D.N.R. program" is unclear and could pose some potential legal problems.

Changes to the Executive Order No. 11, which has passed the Administrative Policy Board as an extension of time allowed, is in violation of Band Law. No policy board possesses the authority to modify or alter an Executive Order.

Since disciplinary action was initiated against A.J. Nickaboine and he has in-turn filed a complaint in Court, the matter is under Court jurisdiction and review at this time. {See 03-056-83}

Policy Board Meeting - May 10, 1983

Amendment to the contract of the Dentist at Ne-ia-shing Clinic require Band Assembly enactment. I am not aware that a contract exists for the Dentist. If he is not an employee, an Executive Order needs to be issued to exempt him from personnel policies and authorize preparation of a contract.

Problems encountered between the Administration Policy Board and the Office of Management and Budget need to be resolved in the same manner as inter-branch disagreements since the Office of Management and Budget is located under the jurisdiction of the Band Assembly. The request of Administration of the appearance of the Senior Accountant or any other needs presence of formal approval of the Secretary of Treasury. Similarly, the Administration Policy Board

can not directly communicate with line-staff personnel, in their official capacity and acting as a governmental entity, without first communicating with the Secretary of Treasury.

Regarding the discussion of a problem between Bill Oseth and Blaze Hill, Mr. Oseth can not be charged with theft or embezzlement of program funds in the Court of Central Jurisdiction due to lack of the Court's subject-matter and statutory jurisdiction. Similarly, the Solicitor can not notify any person to attend a meeting of any policy board on any matter due to lack of statutory authority.

The amendment to Section 3.2 of the Personnel Policies needs to be submitted to the Band Assembly for ratification. Until such ratification action is finalized, the Administration Policy Board is enjoined from enforcement.

The discussion of the special personal employee contract for regulation of attendance for certain employees has no foundation in law. The Band Assembly established Personnel Policy which governs the conditions of employment with the tribal government. The Administration Policy Board therefore lacks authority to implement special personnel contract conditions which are more stringent than those authorized under law. Any such contract would under these circumstances be invalid. The motion of Leonard Sam needs to be over-ruled.

**Policy Board Minutes - May 17, 1983**

The Public Works Commission has sole jurisdiction over any water and sanitation facility under the jurisdiction of the Band under Band Statute 1010-MLC-6, Section 2. Any such request for special appropriation would originate in the Commission.

The Contractual agreement between the Mille Lacs Family Health Center and the Band needs to be forwarded to the Band Assembly with recommendations for the ratification process before its implementation.

**Policy Board Minutes - May 26, 1983**

The development of sewage and improvement of holding tanks for the Drift Inn needs to be vetoed due to lack of subject matter jurisdiction by the Board. See above comment, May 17, 1983 re, Public Works Commission.

The Manager at the Drift Inn is not bound by the Band's personnel policies according to Section X - Management Sub-Agreement.

With regard to the liquidation of fixed assets of the Band, the Administration Policy Board lacks authority to liquidate equipment. Since the Chief Executive of the Band is the custodian of all Band property, 1001-MLC-1, Section 5-01, an executive order is required to dispose of fixed assets by authorizing the Administration Policy Board to complete the process.

The determination to remove part-time provision from Section 5-01 is unclear to me. Personnel policies which have been ratified by the Band Assembly can not be altered by exemptions specifically listed without further ratification.

The Dentist is an employee of the Band and therefore is subject to the personnel policies unless specifically authorized by Executive Order for exemptions under a ratified contract provision in the order.

Special Comment - I think it is not in the interest of good and honest government for Commissioners to motion for acceptance for activities which is under their direct jurisdiction. Although, no law or policy prohibits this, I don't think it looks right to the general public and raises unnecessarily the question of conflict of interest.

Budget modifications need ratification by the Band Assembly.

Policy Board Meeting - June 3, 1983

Comments provided in earlier parts of this opinion are additionally applicable to sections of these minutes.

Policy Board Meeting - June 9, 1983

The Governor's Counsel Contract for the Ah-shu-moog proposal apparently has been signed with the objectionable provisions remaining intact. Reaffirmation procedure by the Band Assembly may not have occurred.

The matter of payment for the Solicitor General's position from the Economic Development Administration account of the General Funds is in violation of the contract between the Minnesota Chippewa Tribe and the United States Department of Commerce - E.D.A. This contract provides for an Economic Development Planner for each of the six reservations. As you are aware, the Reservation Business Committee broke diplomatic relations with E.D.A. over E.D.A.'s failure to approve the Band "Overall Economic Development Plan" for 1981. Since January, 1982, the Band has not funded this type of position. Many quarterly and yearly reports are due and if they have been submitted, the contents may have been inconsistent with the objectives of the contract. As the former Commissioner of Finance, I lobbied hard for the Band not to accept the lump sum payment from the Chippewa Tribe estimated to

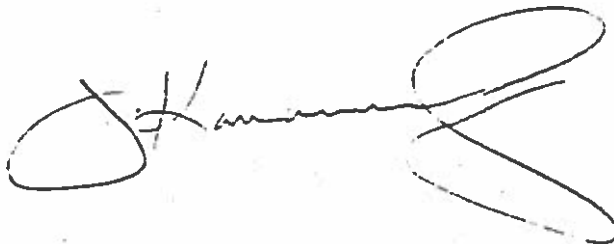
be sixteen thousand dollars. Once this funding was received, I lobbied against expenditure on the basis that no activity had occurred during the period in question. The R.B.C. had maintained the severed relations position with E.D.A. and to back date reports would essentially involve unethical production of progress reports. As Solicitor General, I have been sworn to uphold various laws and the Constitution of the Chippewa Tribe. If the Band is desirous of utilizing the E.D.A. funding, it should hire an E.D.A. Planner to implement the terms of the contract between E.D.A. and the Chippewa Tribe and not subsidize the Solicitor General's position. I strongly urge you to reconsider the decision that has been rendered and is now awaiting ratification by the Band Assembly.

Relative to the adoption of the School Board personnel policies, a review of the statutes indicated no intention of the Band Assembly to authorize the preparation of a second set of personnel policies for the Education Administration which are different from other areas within the government. Secondly, I find no statutory authority for the School Board/ L.I.E.C. to adopt and enforce such policies. Until such legal authority is established, the Commissioner of Education is hereby requested to cease and desist from enforcement of any aspect of these new school policies pending legislative authorization.

THE SOLICITOR GENERAL

DATED:

June 28, 1983

A handwritten signature in black ink, appearing to be "D. H. ...", written over a horizontal line. The signature is stylized and somewhat cursive.