

INTEROFFICE MEMORANDUM

TO: CALEB DOGEAGLE, SOLICITOR GENERAL

FROM: DARCIE BIG BEAR, BAND ASSEMBLY CLERK 

SUBJECT: NOTICE OF ANNULMENT OF SOLICITOR'S OPINION 47-22

DATE: NOVEMBER 3, 2022

CC: BAND ASSEMBLY, LEGISLATIVE COUNSEL



On Wednesday, November 2, 2022, the Band Assembly held a hearing, pursuant to 3 MLBS § 20, in which you participated, to discuss its intent to annul the Opinion of the Solicitor General 47-22 ("Opinion"). After the hearing, but during the same Band Assembly meeting, Band Assembly voted to annul the Opinion in whole pursuant to 3 MLBS § 20. The reasons for the annulment were provided within the hearing itself. Miigwech for your analysis and participation.



THE MILLE LACS BAND OF
OJIBWE INDIANS

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Office of the Solicitor General

Opinion of the Solicitor General
No. 47-22
October 24, 2022

Title 4 MLBS § 18 reads the Solicitor General shall have the following responsibilities, obligations and authority on behalf of the Non-Removable Mille Lacs Bands of Chippewa Indians: (d) To interpret all laws and executive, legislative, secretarial and commissioner's orders and policies on behalf of the Non-Removable Mille Lacs Bands of Chippewa Indians. (1) All said interpretations shall be titled in the form of Opinion of the Solicitor General, be consecutively numbered, dated as to the date of issuance, and contain the official seal of the Band. (2) All said opinions of the Solicitor General shall have the force of law and shall be binding until annulled by the Court of Central Jurisdiction or amended pursuant to legislative order of the Band Assembly. This opinion is issued pursuant to the authority conferred upon the Solicitor General in 4 MLBS § 18 (d) and shall have the force of law subject to the conditions stated in § 18 (d) (2).

Title 3 MLBS § 33 states should there be any doubt as to the proper interpretation of any part of this title, or of 2 MLBS Chapter 1, the Speaker of the Assembly or the Band Assembly as an entity may submit such question to the Solicitor General, who shall give his or her written Opinion thereon, and such Opinion shall be binding unless annulled in whole or in part, by the Court of Central Jurisdiction, or amended by the Band Assembly pursuant to the enactment of the law. On October 3, 2022, Chief Executive Melanie Benjamin requested a Solicitor's Opinion on the following question:

(1) "Does Section 1.02 of Ordinance 59-22 limit the Band's political subdivisions' and independent agencies' payment of salaries and wages to job positions in the proposed budget to the corresponding proposed amount?"

Ordinance 59-22 was introduced, passed and signed into law on July 6, 2022. It is the biennial appropriations bill for Band governmental operations for the fiscal years ending September 30, 2022 and September 30, 2023.

My understanding of the context for this request is as follows. Sometime after Ordinance 59-22 was enacted, Commissioner of Finance Towle notified persons within the Executive Branch that he was concerned about recent payroll action notices received by the Office of Management and Budget “plac[ing] the persons[’] rate of pay at an amount in excess of that which is in the approved biennium budget (Ord. 59-22).” Commissioner Towle indicated that he had instructed OMB staff to “immediately cease processing any PPAN’s not already processed, that they are aware will result in the person’s rate of pay exceeding that which is in the approved biennium budget.” Commissioner Towle cited section 1.02 of Ordinance 59-22 as the authority for his position: “Absent any other lawful guidance, salary, wages, and the associated fringe benefits are only permitted to be expended for the Position Titles listed in the budget detail submitted with the biennium budget.” Commissioner Towle then advised that changes to position rates of pay within the Executive Branch must be first approved by APB, and then submitted to Band Assembly for approval.

I conclude that the answer to the Chief Executive’s query is no, based on the plain language of the Ordinance.

1. The Plain Language of the Ordinance Does Not Limit Executive Spending to the Amounts Associated with Individual Position Titles in the Budget Narrative.

Band Assembly has the exclusive authority to appropriate Band revenue. 3 MLBSA § 3(b). The Chief Executive has exclusive authority to prepare biennial budget requests for all executive functions and submit the same to Band Assembly for appropriation. 4 MLBSA § 3(d). Executive officers within the Executive Branch have authority to authorize the expenditure of all appropriated funds within their subject matter jurisdiction. 4 MLBSA § 7(c). The executive branch’s “discretion to spend appropriated funds is cabined only by the text of the appropriation, not by [the legislature’s] expectations of how the funds will be spent . . .” *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 200 (2012) (internal quotation marks omitted). When examining Executive compliance with appropriation laws, “legislative intention, without more, is not legislation.” *Train v. City of New York*, 420 U.S. 35, 45 (1975). The issue “is not how [the legislature] expected or intended the [executive] to behave, but how it required [the executive] to behave, through the only means by which it can (as far as the courts are concerned, at least) require anything -- the enactment of legislation.” *Int’l Union, UAW v. Donovan*, 746 F.2d 855, 860-61 (D.C. Cir. 1984). Thus, the focus “must be upon the text of the appropriation.” *Id.* If the legislature “does not intend to permit agency flexibility, but intends to impose a legally binding restriction on an agency’s use of funds, it does so by means of explicit statutory language.” *Id.* at 861 (quoting *LTV Aerospace Corp.*, B-183851, Oct. 1, 1975, 55 Comp. Gen. 307, 318, 75-2 CPD para. 203).

Section 1.02 in its entirety states:

All funds appropriated are maximum fund amounts and shall not be exceeded within any line item. Funds must be utilized for the purposes for which they were requested,

notwithstanding any exceptions provided in this Ordinance or any other active Band Ordinance. No expenditure that causes a budget line item to be exceeded may be paid without further Band Assembly action, except that the Office of Management and Budget leadership is authorized to exercise reasonable discretion regarding line item budget overages such as to avoid unintended outcomes that would result in an adverse impact to the Band. Examples include, but are not limited to: paying a utility bill to avoid discontinuance of service/utility shut-offs; paying on an invoice to prevent incurrence of late payment charges; and, authorizing expenditures for emergency situations such as a broken water main or heating unit. Absent any other lawful guidance, salary, wages, and the associated fringe benefits are only permitted to be expended for the Position Titles listed in the budget detail submitted with the biennium budget.

Section 1.02 begins by stating that “[a]ll funds appropriated are maximum fund amounts and shall not be exceeded *within any line item.*” (emphasis added). An appropriation is budget authority to incur obligations and to make payments for specified purposes. U.S. Gov’t Accounting Office, *A Glossary of Terms Used in the Federal Budget Process* at 21 (Sept. 2005), available at <https://www.gao.gov/products/gao-05-734sp>. The term “line item,” as used in appropriation acts, “usually refers to an individual account or part of an account for which a specific amount is available.” *Id.* at 64. In Ordinance 59-22, such line items appear in the budget exhibits attached to the Ordinance, for example, as “Salaries” or “Worker’s Compensation”:

Exhibit A and B

The term’s meaning is not so specific as to include individual Position Titles, which are not included in Exhibits A and B to the Ordinance.¹ For example, the Position Title “Administrative Assistant” is not a line item itself. Rather, it is merely a position that is funded by multiple line items, such as Salaries and Health Insurance. The first sentence of Section 1.02 thus means that the amount of funds appropriated to a given line item in Exhibits A and B, such as Salaries, is a ceiling on salary expenditures; such language limiting the amount of budget authority is a common piece of appropriation acts. This is confirmed by subsequent language in Section 1.02: “No expenditure that causes a budget line item to be exceeded may be paid without further Band Assembly action.”


The final sentence Section 1.02 reads that funds appropriated for salaries, wages, and fringe benefits cannot be expended for Position Titles not listed in the budget proposed by the Executive Branch. The plain language of this provision prohibits the Executive Branch from creating and expending funds on a new Position Title that was not listed in the budget proposal. Nothing in the plain language of the provision expressly or impliedly states that the Band’s political subdivisions’ and independent agencies’ payment of salaries and wages is limited to the proposed amount set

¹ Exhibit A to the Ordinance is the Mille Lacs Band of Ojibwe’s Budget Request for FY 2022, and Exhibit B is the Budget Request for FY 2023. Position Titles appear in the detailed budget narratives but those documents are not attached to Ordinance 59-22.

forth in the budget narrative for each individual job position. Such a limitation on appropriation spending must be done "by means of explicit statutory language," *Int'l Union, UAW*, 746 F.2d at 861, which is lacking in Ordinance 59-22.

The final sentence of Section 1.02 is plainly a limitation on the purpose for which appropriated funds can be used, rather than a limitation on the amount of budget authority. Expenditure of appropriated funds for Salaries cannot exceed the Salaries line item, nor can they be spent for Position Titles not included in the Chief Executive's budget narrative. However, read together, those two provisions do not establish that salary amounts ultimately expended for each individual Position Title cannot exceed the amount of salary used in the budget narrative to inform the budget request. This means that within the Salaries line item, funds can be shifted across different Position Titles as long as spending on salaries for all Position Titles does not exceed the overall Salaries line item limits in Exhibit A and B, and as long as there is no spending for salaries of Position Titles not included in the budget narrative.

This interpretation is also consistent with the division of powers set forth in Band Statutes. Under 4 MLBSA § 7(c), executive officers within the Executive Branch have authority to authorize the expenditure of all appropriated funds within their subject matter jurisdiction. If there are unfilled positions within an executive department, there will be appropriated funds under the Salaries line item that might otherwise not be spent. Executive officers have discretion, subject to Band statutes and personnel policies, to allocate appropriated funds within that Salaries line item amongst the Position Titles under their departmental authority, even if that means existing Position Titles receive a higher salary than indicated in the detailed budget narrative. This is not a budget transfer or a budget revision, because budgeted dollars are not moving between programs or between line items. *Cf. Mille Lacs Band OMB Policies and Procedures* at 11 (June 16, 2021). Thus, as long as the Salaries line items set forth in Exhibits A and B to Ordinance 59-22 are not exceeded, or funds appropriated for Salaries are not spent for another purpose, the Executive Branch has discretion to expend appropriated funds by modifying salary amounts expended for listed Position Titles.


Caleb Dogeagle
Solicitor General

October 24, 2022

Date of Issuance



As to form and numbering according to Title 25 § 4(f);

Hanna Valento

10/24/2022

Hanna Valento
Revisor of Statutes

Date