



THE MILLE LACS BAND OF
OJIBWE INDIANS

Office of the Solicitor General

INTEROFFICE MEMORANDUM

To: Chief Executive, Melanie Benjamin; Secretary Treasurer, Herb Weyaus; and
Chief Justice Alvina Albele
Cc: Corporate Commission
Date: October 25, 2005 Date
Re: Solicitor General's Opinion 32-05

Enclosed is Solicitor General Opinion 32-05, which has become law effective as of Monday October 24, 2005. Band Assembly has not acted within five days of the October 18, 2005 hearing to annul the Opinion in whole or in part as provided in 3 MLBSA § 17. Therefore, the Solicitor General's Opinion 32-05 has become law.

*10/25/05 @ 3:30pm
hand delivered to
cut CEO - & placed
in HW mail box /As*

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**THE MILLE LACS BAND OF
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Office of the Solicitor General

September 26, 2005

Solicitor General Opinion 32-05

This Solicitor General's Opinion interprets nine questions about the Chief Executive's authority over the operations of the Corporate Commission. On September 13, 2005, this Opinion was requested by Secretary Treasurer, Herb Weyaus.

Question One: What control, if any, does the Chief Executive have over the day-to-day operations of the Corporate Commission? None. The Corporate Commission is a separately chartered corporation.

Question Two: Does the Chief Executive have the power to supervise and control the Commissioner of Corporate Affairs with respect to his duties as the Chief Operating Officer of the Corporate Commission? Yes and No. The Commissioner of Corporate Affairs has both ministerial responsibilities under Band law, and serves as the CEO of the Corporate Commission. The Chief Executive has authority to supervise the Commissioner of Corporate

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Affairs performance of his ministerial powers and duties as are set forth in Title 16 MLBSA

§ 5 (a) through (f) as follows:

- (a) To provide for a system of administration for the Mille Lacs Band Business Corporation Act,
- (b) To provide for administration of the Nonprofit Corporation Act,
- (c) To provide for administration and licensing under the Gaming Control Ordinance,
- (d) To account for a net revenue allocation,
- (e) To prepare reports, conduct negotiations with developers and investors, and
- (f) To administer a system to license and certify foreign corporations.

The Chief Executive, however, lacks any authority to supervise the Commissioner of Corporate Affairs in exercising his corporate duties and responsibilities. Restated, this means that the Chief Executive lacks day-to-day control over the operations of the Corporate Commission as stated in Title 16 MLBSA § 111(a).

Question Three: Does the assignment of an “executive official” to the Corporate Commission under 4 MLBSA § 4 mean that the Corporate Commission is no longer a Corporate Body Politic as established under 16 MLBSA § 101? No. As stated in 16 MLBSA § 101, the Corporate Commission is both a corporate body politic and a separately chartered corporation under 16 MLBSA § 1101(1). To the extent that the Corporate Commission is chartered as a corporate body politic, it is the same as any other corporation except: (1) A corporate body politic is a political subdivision with all privileges and immunities of the Band, (2) it has members instead of shareholders, (3) its members, however, have no voting rights, (3) its members have the power to appoint the board of

directors, (4) incorporators are not required, (5) revenues inure to the Band, and (6) the corporation does not pay fees. As discussed in “Question Two” the Commissioner of Corporate Affairs has ministerial duties similar to an executive officer or any secretary of state.

Question Four: If the Corporate Commission is viewed by the public as part of the Executive Branch of Government (as shown on the Corporate Commission letterhead), could this perception endanger the government assets and lead to actions to seize government assets by “piercing the corporate veil”? No. Perception is not an element for piercing the corporate veil. Piercing the corporate veil is the judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corporation’s wrongful acts. Stating that the Corporate Commission is part of the Executive branch of government violates no federal, state or Band law. Typically, commingling of funds or fraud are the most common reasons a court would find to invoke the “piercing doctrine.” It is, however, a misstatement that the Corporate Commission is part of the Executive Branch. The more accurate statement is that the Corporate Commission is part of the Mille Lacs Band. Several challenges have been made to try and pierce the corporate Commission’s corporate veil and all have been unsuccessful. For example, in Swenson v. Band and Corporate Commission et al., this case examined the interplay between the Corporate Commission and the Mille Lacs Band Government. Despite the interplay between Corporate and Band government, the court found this interplay was not fraudulent or a wrongful act just because the Band oversees the Corporate Commission by selection and ratification of the commissioner. The court found nothing under the current administration that would waive the immunity of the Corporate

Commission, its officers or agents; or the Band and its elected officials, officers and agents.

Question Five: What individuals or entities have the power to remove the Corporate Commissioner from his/her position? It depends on whether the First or Second Restatement of the Corporate Charter is in effect. According to the First Restated Corporate Charter of the Corporate Commission of the Mille Lacs Band of Chippewa Indians only the Court can determine if removal from office is merited. According to the Second Restated Corporate Charter of the Corporate Commission of the Mille Lacs Band of Chippewa Indians, any removal would be accomplished by impeachment proceedings before the Joint Assembly. Further, the Corporate Commission By-Laws provide the Court has sole authority to decide if a removal has merit. Put more simply, the answer depends on if the Second Restated Charter was approved by Band Assembly. If the Second Restated Charter was approved, then the process mirrors the process in 3 MLBSA § 25. If the Second Restated Charter was not approved, then a judicial process is required.

Question Six: What is the process for removal of the Corporate Commissioner? Without a determination of which Corporate Charter is in effect this question cannot be answered. If the First Restated Charter is in effect, then a judicial process must be brought alleging serious inefficiency or neglect of duty for misconduct in office as stated in Article VI paragraph 6.7 of the Restated Corporate Charter of Corporate Commission of the Mille Lacs Band of Chippewa Indians; If the Second Restated Corporate Charter is in effect, then Band Statute 3

MLBSA § 25 is followed, which provides the cause for removal Article X, Section 10 of the Minnesota Chippewa Constitution:

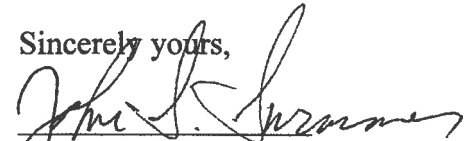
- (a) Malfeasance in the handling of tribal affairs,
- (b) Dereliction or neglect of duty,
- (c) Unexcused failure to attend two regular meetings in succession,
- (d) Conviction of a felony in any county, State or Federal Court while serving on the Reservation Business Committee, and
- (e) Refusal to comply with any provision of the Constitution and Bylaws of the Tribe.

Question Seven: Is there any limitation on the duties that may be lawfully assigned to the Corporate Commissioner by the Chief Executive pursuant to 4 MLBSA § 7(k)? Yes. The Chief Executive may not assign duties that violate Band law, or the scope of her authority stated in Band Statutes.

Question Eight: What Band statutory or constitutional authority, if any, does the Chief Executive have to appoint the President and the Chief Operation Officer of the Corporate Commission? None.

Question Nine: Can an individual, other than the President and Chief Operation Officer of the Corporate Commission, bind the Commission or manage its day-to-day operations? Yes. The Corporate Commission Board may delegate its authority to an operations officer.

Sincerely yours,



John S, Swimmer