



THE MILLE LACS BAND OF
OJIBWE INDIANS

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Office of the Solicitor General

OPINION OF THE SOLICITOR GENERAL
No. 39-17

On December 28, 2016, the Speaker of the Band Assembly inquired, in part, about the methodology followed within an internal memorandum requested by and presented to the Chief Executive.¹ The Speaker subsequently clarified on March 28, 2017, that a formal Opinion of the Solicitor General should review the statutory authority underlying the Chief Executive's purported ability to present a recommendation to the TEC concerning the composition of standing TEC subcommittees.² In the intervening period, the TEC adopted several resolutions affecting its subcommittees, which are not within the central purview of this interpretative document.³

In relation to the opinion request, the Mille Lacs Band has adopted a tri-partite form of government that adheres to a separation of powers principle.⁴ Within this construct, the Chief Executive possesses the independent power "to faithfully and impartially execute the laws . . . of the Band,"⁵ and "the Constitution of the Minnesota Chippewa Tribe is the supreme law of the Band."⁶ Therefore, if a Band recommendation is implicitly permitted in regards to TEC subcommittee appointments, the Chief Executive should be able to assert her wishes.⁷ As with any recommendation, however, the TEC would not be bound to follow it.⁸


Todd R. Matha
Solicitor General


Date of Issuance



¹ Interoffice Memorandum from Att'y Todd R. Matha, Solicitor Gen., to Melanie A. Benjamin, Chief Executive (Nov. 15, 2016) (on file with author) (concluding that the Chief Executive and Band Assembly can submit recommendations to the Minnesota Chippewa Tribe Tribal Executive Committee ("TEC") regarding appointments to TEC subcommittees).

² Only four (4) constitutional provisions directly relate to TEC subcommittees. First, “[t]he Tribal Executive Committee shall . . . delegate to committees . . . any of the foregoing [article V] authorities, reserving the right to review any action taken by virtue of such delegated authorities.” REVISED CONST. & BYLAWS OF THE MINNESOTA CHIPPEWA TRIBE [hereinafter CONSTITUTION], art. V, § 1(i), available at http://www.millelacsband.com/Page_BandStatutes.aspx. Second, “[t]he President of the Tribal Executive Committee shall assume general supervision of all . . . committees of the Tribal Executive Committee, and, as delegated, take direct responsibility for the satisfactory performance of such . . . committees.” *Id.*, Bylaws, art. I, § 1(d). Third, “[d]uties and functions of all appointive committees . . . of the Tribal Executive Committee shall be clearly defined by resolution of the Tribal Executive Committee.” *Id.*, Bylaws, art. I, § 5. And, fourth, the order of business at TEC meetings will generally include “[r]eports of committees.” *Id.*, Bylaws, art. II, § 6(e).

³ *E.g.*, TEC RES. 33-17 (Jan. 23, 2017) (finding “that delegations to subcommittees should be adopted by official action memorialized in a resolution describing in the form of bylaws the purpose, authority, duties and responsibilities and membership of each subcommittee”). The three (3) TEC resolutions appear to render this statutory interpretation largely moot. *E.g.*, NAT. RES. & ENV’T L SUBCOMM. BYLAWS, § 4.1 (identifying membership to include a single member from each Band’s “governing body” as selected by such “governing body”). *Cf.* MINNESOTA CHIPPEWA TRIBE ELECTION ORDINANCE (am. Nov. 9, 2015) § 1.2(A) (defining “Band governing body”).

⁴ 2 MLBSA §§ 3-4, available at http://www.millelacsband.com/Page_BandStatutes.aspx.

⁵ 4 MLBSA § 6(a). *Cf. In re Jackson*, 51 A.3d 529, 538 (D.C. 2012) (citing *Clinton v. Jones*, 520 U.S. 681, 699-700 (1997)) (“[T]he executive branch of government . . . executes the laws.”).


⁶ 2 MLBSA § 1.

⁷ While not explicit within the Constitution, TEC members must surely be capable of presenting recommendations to the TEC in order to conduct business. CONST., Bylaws, art. II. In practice, the TEC also accepts recommendations from Band member (and, at times, non-Band member) attendees at official meetings. To these points – each unremarkable propositions – the Constitution provides that “Robert’s Rules shall govern [the] meetings.” *Id.*, Bylaws, art. II § 5. The Rules, in turn, specifically address and sanction this manner of participation. *See, e.g.*, ROBERT’S RULES OF ORDER (6th ed. 1951), § 1 at 25 (“[B]usiness is brought . . . either by the motion of a member, or by the presentation of a communication”); *see also id.* § 20 at 75 (acknowledging consideration of comments by invited speakers). The Minnesota Chippewa Tribe adopted the Constitution in 1963, thereby seemingly obliging the TEC to adhere to the Seventy-fifth Anniversary Edition of the well-known parliamentary treatise.

⁸ The TEC instead performed its constitutional responsibility of establishing the authority, duties, and functions of its subcommittees. *Supra* notes 2-3.

INTEROFFICE MEMORANDUM

TO: MELANIE BENJAMIN, CHIEF EXECUTIVE
TODD MATHA, SOLICITOR GENERAL

FROM: DARCIE BIG BEAR, BAND ASSEMBLY CLERK 

SUBJECT: NOTICE OF INTENT TO ANNUL SOLICITOR'S OPINION 39-17

DATE: APRIL 12, 2017

CC: BAND ASSEMBLY, STACEY THUNDER



On Tuesday, April 11, 2017 the Band Assembly discussed Solicitor's Opinion 39-17. It is the decision of the Band Assembly to give notice of its intent to annul Solicitor's Opinion 39-17, according to the provisions of 3 MLBSA § 17.

The Band Assembly would like to hold a hearing on Tuesday, April 18, 2017 at 10:30 a.m. at the Aazhoomog Community Center Lake Lena, MN.

INTEROFFICE MEMORANDUM

TO: MELANIE BENJAMIN, CHIEF EXECUTIVE
TODD MATHA, SOLICITOR GENERAL

FROM: DARCIE BIG BEAR, BAND ASSEMBLY CLERK *DBB*

SUBJECT: NOTICE OF ANNULMENT OF SOLICITOR'S OPINION 39-17

DATE: MAY 1, 2017

CC: BAND ASSEMBLY, STACEY THUNDER



On Tuesday, April 25, 2017 the Band Assembly discussed Solicitor's Opinion 39-17. It is the decision of the Band Assembly to annul Solicitor's Opinion 39-17, according to the provisions of 3 MLBSA § 17.