



THE MILLE LACS BAND OF  
**OJIBWE INDIANS**  
*Executive Branch of Tribal Government*

## SOLICITOR'S OPINION 98-20

### PROCEDURAL HISTORY

On May 11, 1998, the Commissioner of Finance and the Commissioner of Administration jointly requested a Solicitor's Opinion clarifying the process for giving employees within the Legislative Branch raises. The question presented and the opinion that follows relates only to positions classified as "employee." Elected officials and Senior Executive staff are governed by different statutory provisions and policies.

### QUESTION PRESENTED

**Does a raise given to an employee of the Legislative Branch have to be approved by the Administration Policy Board prior to becoming effective? Yes.**

### PRINCIPLES OF STATUTORY INTERPRETATION

Various rules and principles of statutory construction have been developed by courts to aid in the interpretation of statutes. The Court of Appeals of the Court of Central Jurisdiction has adopted many of these principles. In The Matter Of: The Interpretation of the Solicitor General 15-OSG-92, 92-CV-5359 (1993).

The starting place for any statutory interpretation "is the language itself." However, in those cases where a literal application would produce an absurd result, "the intention of the drafters or the meaning of the statute, rather than [its] strict language, controls." Interpretation of 15-OSG-92 at 6. "If the language of a Band statute is plain, unambiguous and uncontrolled by other parts of the Band statute or other Band statutes upon the same subject," then it should be given its customary meaning. Id. at 7. Often, though, "the meaning of a statute lies deeper than the actual words of the statute" and "involves questions of judgment." Id. at 9.

Where there is uncertainty as to the true meaning of a statute, "consideration must be given to the problem in our [community]" that the Band Assembly was attempting to remedy. Interpretation of 15-OSG-92 at 8. In addition, a rational and sensible construction of the meaning of statutory language is favored. "The unreasonableness of the result produced by

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one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a more reasonable result." Id. at 9.

Finally, rather than adopt a bright line method of statutory interpretation the Court of Appeals held that the method of interpretation "which achieves a liberal and reasonable interpretation of the statute" should be used. Interpretation of 15-OSG-92 at 10.

## DISCUSSION

### **Does a raise given to an employee of the Legislative Branch have to be approved by the Administration Policy Board prior to becoming effective?**

In 4 MLBSA § 8, the "Band Assembly . . . create[d] within the Executive Branch of Band government an entity . . . known as the Administration Policy Board" and gave the board certain specific "powers, duties and responsibilities." Included among these specifically enumerated powers was the power to "regulate the performance of **all** employees, including the hiring and dismissal of **any** employee." 4 MLBSA § 8(d) (emphasis added). Obviously, the decision on whether or not to give an employee a raise, and, if so, how much of a raise is a part of regulating the job performance of employees.

Examining the statutory language itself, it appears that pursuant to 4 MLBSA § 8(d) the Band Assembly clearly intended to give the Administration Policy Board the power to regulate the job performance of **all** and **any** employees, including those in the Legislative and Judicial Branches. This language is "plain, unambiguous and uncontrolled by other parts of the Band statute or other Band statutes upon the same subject" and should be given its customary meaning. Interpretation of 15-OSG-92 at 7.

In contrast, there are several provisions within the Band Statutes which create exceptions, in limited circumstances, to this general grant of power to regulate the performance of all employees. For example, Title 16 gives the Corporate Commission authority over its own employees. See Solicitor's Opinion 97-17. In addition, staff within the Office of the Chief Executive have been expressly exempted from oversight by the Administration Policy Board. See Ordinance 03-94 (1993). However, there are no similar statutory provisions which exempt Legislative Branch employees from the general grant of power over employment matters to the Administration Policy Board.

Requiring employee raises within the Legislative Branch to be approved by the Administration Policy Board is also a rational and sensible construction of this statutory language, especially in light of the fact that it was the Band Assembly itself that chose to give the board authority over the job performance of **all** and **any** employees. Placing all employees, with some limited exceptions, under one board for regulation of job performance promotes efficiency and consistency in carrying out this responsibility.



THE MILLE LACS BAND OF  
**OJIBWE INDIANS**

*Legislative Branch of Tribal Government*

**NOTICE**

Chief Executive, Marge Anderson.  
HCR 67 Box 194  
Onamia, MN 56359

Solicitor General, James M. Genia  
HCR 67 Box 194  
Onamia, MN 56359

Notice is hereby given to the Chief Executive, Marge Anderson and Solicitor General, James M. Genia of the Band Assembly's intent to annul "Solicitor Opinion 98-20". This notice is given pursuant to 3 MLBSA § 17.

The Solicitor General is further advised that a hearing will be held within 10 consecutive days where he will appear before the Band Assembly to justify Opinion # 98-20.

Dated this 20<sup>th</sup> day of May 1998.

A handwritten signature in black ink, appearing to read "David G. Matrious".

David G. Matrious  
Speaker of the Assembly

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Therefore, we conclude that the Administration Policy Board has the authority to regulate the job performance of Legislative Branch employees, including approval of employee raises. This opinion, of course, is based upon the laws of the Band as they currently exist. As has occurred in limited circumstances in the past, the Band Assembly can, through the enactment of law, create exemptions to the general grant of authority over employment matters to the board contained in 4 MLBSA § 8(d). However, absent such an exemption, all employees of the Band fall under the authority of the Administration Policy Board for regulation of employee performance.

Dated this 13 day of May, 1998.

  
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James M. Genia  
Solicitor General



THE MILLE LACS BAND OF  
**OJIBWE INDIANS**

*Executive Branch of Tribal Government*

July 8, 1998

James Genia  
Solicitor General  
Mille Lacs Band of Ojibwe  
HCR 67, Box 194  
Onamia, MN 56359

Dear Solicitor:

This letter is a request by the Chief Executive, pursuant to 3 MLBSA section 29, to the Solicitor General to issue a Solicitor's Opinion for:

- 1) Role of the School Board and the Commissioner of Education.

Mii-Gwetch for your attention in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marge Anderson".

Marge Anderson  
Chief Executive

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*Legislative Branch of Tribal Government*

LEGISLATIVE ORDER 014

**ANNULMENT OF SOLICITOR'S OPINION 98-20**

WHEREAS, the Band Assembly is the duly elected governing body of the Mille Lacs Band of Ojibwe; and,

WHEREAS, pursuant to 3 MLBSA § 17 and 4 MLBSA § 18(d) the Band Assembly is authorized to annul or amend a Solicitor's Opinion by Legislative Order; and

WHEREAS, Solicitor's Opinion 98-20 was requested by the Commissioner of Finance and the Commissioner of Administration jointly to clarify the process for giving Legislative employees a pay raise; and

WHEREAS, the Band Assembly received a copy of Solicitor's Opinion 98-20 and served Notice of Intent to Annul to the Chief Executive and the Solicitor General; and

WHEREAS, a hearing was held and the Solicitor General appeared in order to justify his Solicitor's Opinion 98-20; and

NOW BE IT ORDERED, pursuant to the powers vested in the Band Assembly the Solicitor General's Opinion 98-20 is annulled in its entirety and replaced by the following rules.

**PART I**

**Rule 1.**

The Chief Executive or the Band Assembly, shall have the exclusive authority to request a Solicitor's Opinion regarding an interpretation of title 4 of the Mille Lacs Band Statutes Annotated.

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**PART II**

**Rule 1.**

An "employee" as referred to in 4 MLBSA § 8(d) shall mean employees of the Executive Branch of the Mille Lacs Band of Ojibwe and does not include personnel of either the Legislative Branch or the Judicial Branch of the Band.

**Rule 2.**

The Administration Policy Board as an entity of the Executive Branch of Band government does not have the authority to approve or disapprove of a pay raise for a Legislative Branch employee.

**IT IS SO ORDERED**

**DONE**, at the Mille Lacs Government Center the 1<sup>st</sup> day of June, 1998.

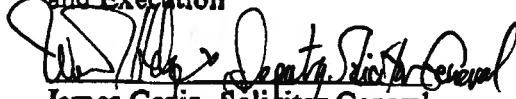
  
David G. Matrious, Speaker of the Assembly

  
Myron Garbow, District I Representative

  
Marvin Bruneau, District II Representative

  
Bernida Churchill, District III Representative

Accepted as to Form  
and Execution

  
James Genia, Solicitor General

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