



THE MILLE LACS BAND OF
OJIBWE INDIANS

43408 Oodena Drive • Onamia, Minnesota 56359

• (320) 532-4181 • Fax (320) 532-7836

Office of the Solicitor General

Solicitor General's Opinion 34-08

On May 9, 2008 the Office of Solicitor General received a request for a Solicitor's Opinion from Secretary/Treasurer Herb Weyaus regarding two issues of statutory interpretation

1. What is the source of power to adopt resolutions for the general welfare of the Band, and what are the limits, if any, that may be in place to limit the scope of this power?
2. Does 3 MLBSA §16(c) apply to joint resolutions, or is it strictly limited to bills?

Source of Authority

To define the source of power to adopt a resolution it is helpful to first define the word "resolution." The word "resolution" appears three times in Title Three and twice in Title Four; however the word itself is not defined in Band Statute. To determine a relevant and appropriate definition, an authoritative law dictionary is consulted. Black's Law Dictionary defines a resolution as "A main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)" BLACK'S LAW DICTIONARY 1337 (8th ed. 2004). This definition comports with the use of the word in Band statute. Therefore a resolution is an expression of the Band Assembly's sense, will, or action.

The authority for the Band Assembly to make such an expression is found in Band Statute. Their role is clearly defined in 3 MLBSA §1 where "all legislative political authority of the Non-Removable Mille Lacs Band of Chippewa Indians is vested in the Legislative Branch of Government". Section One further defines the Reservation Business Committee, referred to in the Minnesota Chippewa Tribe Constitution, by the following language "Unless otherwise specified by Band Statute, all legislative authority of the Mille Lacs Reservation Business Committee shall be exercised by the Band Assembly."

The powers of the legislative body are specifically enumerated in 3 MLBSA §2, which reads, in relevant part:

It shall be the authority and duty of the legislative branch to enact laws which regulate the internal and external affairs of the Mille Lacs Bands in order to promote the general welfare of the people. The Band Assembly shall have the power:

- (a) To enact laws which promote the general welfare of the people;
- (b) To . . .
- (c) To . . .
- (d) To adopt resolutions
- (e) To . . .
- (f) To . . .
- (g) To perform all other legislative functions conferred by the provisions of Article VI of the Constitution of the Minnesota Chippewa Tribe.

Band Statute clearly grants explicit authority to the Band Assembly to enact laws which promote the general welfare of the people and to adopt resolutions.

Another possible source of authority is Article VI of the Minnesota Chippewa Tribe Constitution. Which states in relevant part that:

Each of the Reservation Business Committees shall in accordance with applicable laws or regulations of the Department of the Interior, have the following powers

§1(c) To consult, negotiate and contract and conclude agreements on behalf of its respective Reservation with Federal, State and local governments or private persons or organizations on all matters within the power of the Reservation Business Committee, provided that no such agreements affect any other Reservation or the Tribal Executive Committee without their consent. The Business Committees shall be authorized to manage, lease, permit or otherwise deal with tribal lands, interests in lands or other tribal assets, when authorized to do so by the Tribal Executive Committee but no such authorization shall be necessary in the case of lands or assets owned exclusively by the Reservation. To engage in any business that will further the economic well being of members of the Reservation; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes or to loan the money thus borrowed to members of the Reservation and to pledge or assign Reservation chattel or income due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative when required by Federal law and regulations. The Reservation Business Committee may also, with the consent of the Tribal Executive Committee, pledge or assign tribal chattel or income.

Although Article VI does not implicitly state that Band Assembly can adopt resolutions, it does grant the Reservation Business Committee broad authority to act for the betterment of the Reservation. Presumably this includes the authority to adopt resolutions and enact laws.

Band Assembly has broad authority to adopt resolutions. The authority is granted by Band Statute explicitly and by the MCT Constitution impliedly. Their general authority to adopt resolutions is without limitation on the form, type, or subject matter. The only limiting factor on Band Assembly's authority can be found in 3 MLBSA §3 which reserves to the people the "power to propose bills and laws and enact or reject the same at polls independent of the Band Assembly . . ." Section Three then outlines the process by which the people can enact or reject certain laws despite the objections of Band Assembly.

The Application of 3 MLBSA §16(c) to Joint Resolutions

The phrase "Joint Resolution" is not defined, nor does it appear a single time in Band Statute. To distinguish the difference between a resolution and a joint resolution, Black's Law Dictionary again provides the appropriate definition. A "Resolution" as already defined above is "A main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)" BLACK'S LAW DICTIONARY 1337 (8th ed. 2004). While a "Joint Resolution" is defined as "A legislative resolution passed by one house and agreed to by the other. It has the force of law and is subject to executive veto." BLACKS LAW DICTIONARY 1337 (8th ed. 2004). The distinction being a Resolution expresses the will of a single body (Band Assembly) while a Joint Resolution expresses the will of both bodies (Band Assembly and the Chief Executive). A Joint Resolution by a Band Government definition would be a resolution considered and passed by the Band Assembly and subject to veto by the Chief Executive. This is the same legislative process followed for passage of a bill into law and would seem to fall under the requirements of 3 MLBSA §16(c) which reads:

After formal action of the Band Assembly, no later than 72 hours after said action, each bill shall be personally delivered to the Chief Executive, who shall have five calendar days from the date of receipt to either sign the bill into law, or veto the bill and return it to Band Assembly with a written veto message containing his objections to the bill. In the event he neither signs the bill or vetoes it, it shall become law without his signature after the expiration of five days from the date of receipt of the bill.

To determine if 3 MLBSA §16(c) applies to joint resolutions it is helpful to determine if "bill" and "joint resolution" mean the same thing in terms of Band Statute. The United States Senate website compares a bill and a joint resolution and declares a joint resolution means "A legislative measure . . . which requires the approval of both chambers . . . and is submitted (just as a bill) to the President for possible signature into law . . ." See: http://www.senate.gov/reference/glossary_term/joint_resolution.htm. The Senate's definition when taken alone would seem to indicate there is no discernable difference between a joint resolution and a bill, at least not at the Federal level. However Band Statute does provide the guidance needed to make a clear determination that 3 MLBSA §16(c) does not apply to joint resolutions. 3 MLBSA §28 entitled "Style of Laws" provides the definitive answer. The statute reads: "The style of laws of the Non-Removable Mille Lacs Band of Chippewa Indians shall be 'Be it enacted by the Band

Assembly of the Non-Removable Mille Lacs Band of Chippewa Indians.’ *And no laws shall be enacted except by bill.*” (Emphasis and italics added) This portion of the statute requires all legislation with the force and effect of law to be in the form of a bill. It also precludes any other form of legislation from being subject to process outlined in 3 MLBSA §16(c). Because the word “bill” is referenced six times in §16(c) and it is the only form of legislation referenced in either §16(c) or §28 it is clear that the two statutes, when taken together, meant for the Chief Executive timeline to apply exclusively to a bill and to no other form of legislation.

Any joint resolution with the intended force and effect of law should be in the form of a bill rather than a joint resolution. Expressions of policy in the form of a joint resolution are certainly still a vital and useful practice for Band Government and should continue to be utilized for matters that do not carry the gravity of Band law. The joint resolution does not carry with it the weight or importance of Band law and the appropriate conclusion is the writers of Band Statute intended for legislation not in the form of a bill to fall outside of the timeline requirement of 3 MLBSA §16(c).

A joint resolution passed by Band Assembly but not signed by the Chief Executive simply becomes a Band Assembly resolution. It does not carry the force and effect of law, to do so would require the signature of the Chief Executive. Thus a proper interpretation of Band Statute leaves a legislative “black hole” where a document entitled “Joint Resolution” can lay in perpetuity on the Chief Executive’s desk and does not carry with it the same requirement to follow 3 MLBSA §16(c) of a document entitled “A Bill.”

The passage of laws is the single most important function of Band government, it is the statutory responsibility of the Band Assembly to present bills and for the Chief Executive to sign them into law, veto them or withhold action and allow the bill to become law. The authority and the process, as outlined in Band Statute must be construed narrowly. Any expansion of the authority or curtailing of the ability to pass laws must be addressed through the legislative process and cannot be expanded nor reduced through a Solicitor’s Opinion.

Dated this 27th day of May, 2008



Rjay Brunkow
Solicitor General