

### **Solicitor Opinion 27-03<sup>1</sup>**

**A Solicitor's Opinion interpreting 5 MLBSA § 111(b), and determining that the Band may lawfully agree to arbitrate contractual disputes and limit the grounds on which the Court of Central Jurisdiction can overturn an arbitration award.**

The Solicitor General received a request for a Solicitor's Opinion on December 23, 2003 from the Secretary/Treasurer Herb Weyaus. The Solicitor General has the power to interpret the laws of the Band under 4 MLBSA § 18 (d). The Solicitor General has the authority to issue opinions memorializing his interpretations of Band law and such opinions are to be given the force of law unless annulled by the Court of Central Jurisdiction or amended by order of the Band Assembly.

I have been asked by Band Assembly and the Chief Executive to determine the enforceability, under Band law, of a contractual provision which provides that: (1) any disputes with the Band arising under the contract must be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and (2) any arbitration award shall be enforced by the Band's Court of Central Jurisdiction, which shall not conduct a *de novo* review of the dispute, but rather, must apply the same standard of review that would be applied by federal courts in such circumstances.

To determine the enforceability of this contractual provision requires me to interpret 5 MLBSA § 111(b), which reads as follows:

The Court of Central Jurisdiction is hereby granted exclusive original jurisdiction over all criminal or civil causes of action, involving any person, where such grievance or dispute arises concerning any property personal or otherwise, located on lands or contiguous waters subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

See 5 MLBSA § 111(b); and

WHEREAS, because this question is of great significance to the Band and is likely to reoccur in the future, it is sensible for me to issue a formal interpretation of 5 MLBSA § 111(b); and

NOW THEREFORE, pursuant to the authority vested in me by 4 MLBSA § 18(d), I conclude that a contractual provision requiring that all disputes with the Band be resolved by binding arbitration, with the arbitration award to be enforced by the Court of Central Jurisdiction, is enforceable despite the provisions of 5 MLBSA § 111(b). The following reasons support my interpretation:

1. Federal and state courts have routinely recognized that when the term “person” is used in a statute, there is ambiguity as to whether a sovereign government should be included within that term. E.g., Inyo County v. Paiute-Shoshone Indians, 538 U.S. 701 (2003) (holding that the term “person” as used in 42 U.S.C. § 1983, was ambiguous, and concluding that, in the situation presented, a tribe did not qualify as a “person” who may sue under 1983). Title 5, Section 111(b) of the Mille Lacs Band Statutes is no different, and therefore, to determine whether the term “person,” as used in that section, includes the Band itself, one must look to the surrounding statutory scheme for guidance. Several statutory

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<sup>1</sup> This Opinion is subject to technical correction and editing.

provisions lead me to conclude that “person” as used in 5 MLBSA § 111(b), was not intended to include the Band or its subdivisions.

2. First, Title 5, Section 111(d)(1) of the Mille Lacs Band Statutes specifically grants the Court of Central Jurisdiction authority to hear actions involving the Band. That section does not provide for “exclusive original jurisdiction” as does 5 MLBSA § 111(b), but rather, states that the Court of Central Jurisdiction “shall have jurisdiction” over all civil matters in which the Band or any of its political subdivisions are a party. This language indicates that the Band Assembly chose to give the Band and its subdivisions more flexibility than “persons,” by granting the Court of Central Jurisdiction concurrent, but not exclusive, jurisdiction over actions involving the Band.

3. Second, 2 MLBSA § 5(a), which addresses the sovereign immunity of the Band, provides that the Band Assembly has the authority to determine “in what manner, and in what courts” suits can be brought against the Band. This section therefore indicates that the Band Assembly has the power to designate the forums in which individuals may bring suits against the Band – a power which would not exist if the Court of Central Jurisdiction had exclusive original jurisdiction over all actions involving any property located on Band lands. Further that Band Assembly and the Chief Executive desire to approve a loan and have determined that it is in the best interest of the Band for the Corporate Commission to obtain a loan, and that a waiver of immunity and an agreement to arbitration is necessary to complete the transaction.

4. Third, the Chief Executive and Band Assembly have agreed through Joint Resolution 10-04-17-04 to acknowledge that certain provisions related to limited waivers of

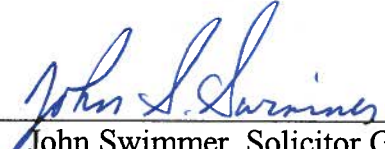
sovereign immunity, have consented to arbitration, and consented to application of Minnesota State law. To the extent that any other Band Statute or Resolution may conflict with this Joint Resolution, it is my interpretation that the Joint Resolution resolves any conflict or ambiguity.

5. Finally, that Joint Resolution 10-04-17-03 constitutes valid and enforceable Band law, and is a resolution within the meaning of 3 MLBSA § 28.

#### Conclusion

Therefore, I conclude that a contractual provision requiring that all disputes with the Band be resolved by binding arbitration, when specifically negotiated and ratified by a Joint Resolution that provides that an arbitration award be enforced by the Court of Central Jurisdiction without a *de novo* review, is enforceable despite the provisions of 5 MLBSA § 111(b).

Dated this 24 day of December, 2003.

  
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John Swimmer, Solicitor General