



THE MILLE LACS BAND OF
OJIBWE INDIANS

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Office of the Solicitor General

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Solicitor General Opinion 35-10

On April 1, 2010 the Chief Executive asked for an interpretation of Band Statute, the question presented was the following: Is there a legal basis for the Chief Executive to request that a Commissioner (Appointed Official), running for elected office, take a leave of absence for the duration of his/her campaign?

Commissioner Defined

4 MBLBS §2 grants "Unless otherwise specified by Band Statute, all Executive Branch Authority shall be exercised by the Chief Executive." This is a broad grant of authority for the Chief Executive to manage the day-to-day affairs of the Executive Branch. The Executive Branch of Band Government includes the following departments and offices: Health and Human Services, Community Development, Administration, Natural Resources, Education, Corporate Commission, and the Office of Solicitor General. Each Department or Office has an appointed official who functions as the department leader. That leader is generally referred to as a Commissioner. Within the authority of the Chief Executive is the ability to appoint, subject to Band Assembly ratification, Executive Officers. 4 MLBSA §4 Defines Executive officers as "the Chief Executive, Commissioner of Administration, Assistant Commissioner of Administration, Commissioner of Natural Resources, Commissioner of Education, Commissioner of Corporate Affairs, the Commissioner of Human Services, and the Commissioner of Community Development." The only Commissioner who is not an Executive Officer is the Commissioner of Finance, who is a Legislative appointee.

The Role of a Commissioner

The Chief Executive has an extensive list of duties under Band Statute and is ultimately responsible for every single occurrence within the Executive Branch. As Executive Officers, each of the commissioners must maintain the confidence of the Chief Executive. The Chief must be able to rely on each commissioner to ensure that the day-to-day operation of that commissioner's department functions in a manner that the Chief desires. Additionally, Executive Officers are charged with an extensive list of duties under Band Statute (4 MLBSA §7).

The executive officers shall have the following general authority in exercising subject matter authority conferred by Band Statute:

- (a) To faithfully and impartially execute the laws of the Band and the policies of the Executive Branch of government

- (b) To conduct external relations with their counterparts in the political subdivisions of other governments, pursuant to the prior authorization of the Chief Executive.
- (c) To authorize the expenditure of all appropriated funds within their subject matter jurisdiction.
- (d) To regulate the performance of their duties by all persons employed within their area of subject matter jurisdiction.
- (e) To advise the Chief Executive on all matters related to their subject matter jurisdiction, be it external or domestic
- (f) To recommend the reorganization of any department within their subject matter jurisdiction as they may deem advisable in the interests of economy or efficiency.
- (g) To prescribe procedures for the development of policy in the area under their respective jurisdiction
- (h) To issue commissioner's orders on any subject matter within their jurisdiction pursuant to the authority conferred by Band Statute. Such written statements shall be uniform format, numbered consecutively and have effective and expiration dates affixed thereto.
- (i) To take such measures as are deemed necessary to prevent any action which threatens the well-being of programs within their respective jurisdiction, by the issuance of a formal commissioner's order.
- (j) To exercise any and all authority conferred pursuant to the provisions of any other Band statute.
- (k) To perform any duties as may be lawfully assigned by the Chief Executive.
- (l) To represent the interests of the Chief Executive in matters within their subject matter jurisdiction before the Band Assembly.
- (m) To represent the interests of the Executive Branch of Band government before any exterior governmental body as authorized and directed by the Chief Executive. No such representation shall occur by any commissioner unless the said commissioner shall present to the exterior governmental body his or her official letter of credence.

Of particular relevance is subsection (l) which reads ***"To represent the interests of the Chief Executive in matters within their subject matter jurisdiction before the Band Assembly."*** Because each commissioner is charged with representing the interests of the Chief Executive to the Band Assembly, the Chief must have full faith and trust in the commissioner to carry out this duty. The Chief Executive meets with the Band Assembly rarely and only under certain circumstances. The day-to-day issues that arise within Executive Branch departments that need to be addressed with the Band Assembly are generally handled at the commissioner level. The reflection of this reality is that the Chief Executive must have confidence and trust in each of his/her commissioners to accurately, honestly and competently represent the Chief's interests to the Band Assembly.

When the Chief Executive has reason to doubt that a commissioner can represent his/her interests before the Band Assembly because of a commissioner's desire to seek elected office, the Chief must weigh the impact of the commissioner's attempt to gain elected office and the impact that has on the Band Assembly against the duty of that commissioner to represent his/her interests to the Band

Assembly. This holds true whether the commissioner is seeking elected office in the Executive Branch or Legislative Branch. In either occurrence the Chief must make a decision, based on his/her own assessment, of that commissioner's ability to perform the statutory duties prescribed by 4 MLBSA §7. The decision must be made on an individual, case-by-case basis.

The Band has a policy in place that addresses government employees who desire to seek elected office. The Absence and Leave section of Band Personnel Policy states:

Employees planning to campaign for, seek, or accept appointment to a public office must give prior notice of their intention to their supervisor. Their supervisor will review with the employee the Band government's requirements to avoid a conflict of interest and to maintain satisfactory attendance, effort and performance standards. Employees engaging in political activities must do so as individuals on their own time and not as representatives of the Band government or make any representation otherwise.

An appointed official is technically an employee of the Band, however, unlike any other employee, an appointed official for the Band has statutory duties to fulfill. It is these statutory duties that the Chief must take into consideration in making an assessment of a given commissioner's ability to perform the duties while seeking elected office. The MCT Constitution was amended recently to forcing the resignation of an elected official seeking elected office different than the one they currently hold. (see MCT Election Ordinance #10) Placing an appointed official on political leave while that official seeks elected office is less drastic, and properly reflects the chief's personal assessment of that commissioner's ability to perform the statutory duties required of his/her appointment.

It is indeed proper and necessary for the Chief Executive to require a commissioner, with statutory duties to represent the Chief Executive, to take a leave of absence while the Commissioner formally seeks elected office within Band Government. This opinion does not address, and the question was not presented on the impact of a commissioner seeking elected office outside of Band Government.

Dated this the 8th day of April, 2010

A handwritten signature in black ink, appearing to read 'Rjay Brunkow', is written over a horizontal line.

Rjay Brunkow

Solicitor General