



THE MILLE LACS BAND OF
OJIBWE INDIANS

Executive Branch of Tribal Government

SOLICITOR'S OPINION 98-21

PROCEDURAL HISTORY

The Chief Executive and Commissioner of Education have requested a Solicitor's Opinion clarifying the roles and responsibilities of the Commissioner of Education and the Nay-Ah-Shing School Board. In particular, the request involved who has authority to hire, supervise and discipline employees of the education department.

QUESTION PRESENTED

Does the Commissioner of Education have ultimate authority within the education division for hiring, supervising and disciplining employees? 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 one among alternative possible interpretations of a statute is reason for rejecting that

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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 the Commissioner of Education have ultimate authority within the education division for hiring, supervising and disciplining employees?

The issue of who has responsibility for hiring, supervising and disciplining education division employees is not new. The Solicitor General’s Office has been involved in discussions about this issue dating back to at least 1993. Hopefully, this Solicitor’s Opinion will help clarify the situation.

Executive Order 108-93 drew a distinction between school-based programs, such as elementary education, secondary education, child care and Headstart, and non-school programs, such as scholarships, adult education and Johnson O’Malley. Under this Executive Order, the Commissioner of Education, and not the school board, is given responsibility for overseeing the non-school programs. In addition, while Executive Order 108-93 places the school-based programs under the school board, it also states that “[t]he [b]oard shall remain within the jurisdiction of the Commissioner of Education.” Clearly, Executive Order 108-93 envisions a hierarchy within the education division with the Commissioner of Education at the top.

We turn now to Title 9 of the Mille Lacs Band Statutes Annotated which set forth the powers of the Commissioner of Education and the Nay-Ah Shing School Board. The Commissioner of Education is “responsible for the day-to-day administration of all education activities **including supervisory authority over any and all employees.**” 9 MLBSA § 16. However, this grant of supervisory authority is limited by a requirement that the commissioner “shall recommend the employment, discipline or termination of any education employee for just cause,” indicating that some other person or entity must approve these activities. *Id.*

Who has this approval authority? It is clear from Title 9 that it is not the Nay-Ah-Shing School Board. The school board’s authority has been limited to “promulgat[ing] **policy** for the employment and termination of employees or the regulation of the behavior of said employees through authorized personnel policies.” 9 MLBSA § 8(c)(7). However, in 4 MLBSA § 8, the Administration Policy Board is granted the power to “regulate the performance of **all** employees, including the hiring and dismissal of **any** employee.” 4 MLBSA § 8(d) (emphasis added). In fact under the personnel policies in effect at the time that Title 9 was enacted, hirings, disciplinary actions and terminations were approved by the Administration Policy Board upon the recommendation of the commissioner for the respective division. This provides strong

evidence that what was intended was for the Commissioner of Education, subject to the authority and policies of the Administration Policy Board, to have ultimate authority over employees within the education division. This interpretation is reasonable, rational and sensible and fosters consistency, to the extent possible, in how personnel matters are handled.

Both Title 9 and Executive Order 108-93 establish a hierarchy within the education division with the Commissioner of Education at the top and the school board beneath as a policy making entity for school-based programs. Therefore, we conclude that the Commissioner of Education has the ultimate authority within the education division for hiring, supervising and disciplining employees, including school employees, subject to the policies and authority of the Administration Policy Board. Among other powers, the Nay-Ah-Shing School Board does have the power to establish separate personnel policies for school employees, just as the Tribal Police Department has enacted separate policies. However, like the police department policies, school board personnel policies, if adopted, would require the approval of the Administration Policy Board before becoming effective.

This opinion, of course, is based upon the laws of the Band as they currently exist. A proposal to update Title 9 and several other titles within our Band Statutes is currently under consideration. If approved, the proposal will allow the opportunity to look at not only what Title 9 says but also what it should say.

Dated this 28th day of August, 1998.



James M. Genia
Solicitor General



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

NOTICE

Chief Executive, Marge Anderson.
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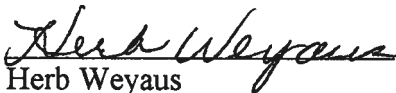
Commissioner of Education, Bill Hemming
HCR 67 Box 194
Onamia, MN 56359

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

Notice is hereby given to the Chief Executive, Marge Anderson, Commissioner of Education Bill Hemming and Solicitor General, James Genia of the Band Assembly's intent to annul "Solicitor Opinion 98-21". This notice is given pursuant to 3 MLBSA § 17.

The Solicitor General is further notified that a hearing will be held within 10 days where he will appear before the Band Assembly to justify Opinion # 98-21.

Dated this 3rd day of September 1998.


Herb Weyaus
Speaker of the Assembly

OFFICIAL SEAL OF THE BAND

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Legislative Branch of Tribal Government

LEGISLATIVE ORDER 016

ANNULMENT OF SOLICITOR'S OPINION 98-21

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 98-21 was requested by the Commissioner of Education and the Chief Executive to clarify the roles and responsibilities for the Commissioner of Education and the Nay-Ah-Shing School Board; and

WHEREAS, the Band Assembly received a copy of Solicitor's Opinion 98-21 and served Notice of Intent to Annul to the Chief Executive, the Commissioner of Education and the Solicitor General; and

WHEREAS, a hearing was held and the Solicitor General appeared in order to justify Solicitor's Opinion 98-21; and

NOW BE IT ORDERED, pursuant to the powers vested in the Band Assembly, the Opinion of the Solicitor General 98-21 is annulled in its entirety.

IT IS SO ORDERED

DONE, in District III, at the Grand Casino Hinckley the 23rd day of September, 1998.

A handwritten signature in cursive script that reads "Herb Weyaus".

Herb Weyaus, Speaker of the Assembly

Myron Garbow, District I Representative

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Marvin H. Bruneau
Marvin Bruneau, District II Representative

Harry Davis
Harry Davis, District III Representative

Accepted as to Form
and Execution

James Genia, Solicitor General

OFFICIAL SEAL OF THE BAND