



# THE MILLE LACS BAND OF OJIBWE INDIANS

*Office of the Solicitor General*

## **Solicitor's Opinion 28-04**

### **A Solicitor General's Opinion Interpreting section 12(a)(2) of the Gaming Act.**

#### **Introduction**

On January 8, 2004, the Office of the Solicitor General received a request for a Solicitor General's Opinion from Melanie Benjamin, Chief Executive of the Mille Lacs Band and Doug Sam, Chairman of the Mille Lacs Band Gaming Authority, interpreting the Gaming Act. The controversy centers around the appointment of Lloyd Rolfes as Interim Director for the Gaming Authority. The Gaming Act establishes an "Office of Gaming Regulation & Compliance." The Office of Gaming Regulation & Compliance is supervised by the Director, but subject to ultimate control by the Gaming Authority. The Gaming Authority named Lloyd Rolfes as an Interim Director by resolution. Mr. Rolfes asserts that he is the permanent Director by virtue of his appointment by a majority vote of the Gaming Authority Board of Directors.

The Solicitor General finds that as defined under the Mille Lacs Band Gaming Act section 12(a)(2) and the December 31, 2003 Board Resolution that an interim appointment means a temporary appointment that neither vests permanent employment rights, nor an expectation of a permanent appointment on Mr. Rolfes. The rationale for this decision is set forth as follows.

#### **Facts Presented**

This is fundamentally an employment dispute between the Interim Director of the Office of Gaming Regulation and Compliance Lloyd Rolfes and the Chairman of Gaming Authority, Doug Sam, over whether Lloyd Rolfes was appointed in an Interim status or as the permanent

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Director of Gaming Regulation and Compliance. The Gaming Act is a newly created act established August 19, 2003. The Gaming Authority is managed by a Board of Directors consisting of five (5) members appointed to office. The Gaming Authority consists of four newly appointed Directors. The Board is in the final process of seating members, but still has one vacant seat. On December 31, 2003 Gaming Authority Board (“Board”), the Board held a meeting and named Lloyd Rolfes as Interim Director for the Gaming Authority. Mr. Rolfes asserts that his appointment as Interim Director is a permanent appointment under section 12 (a) (2) of the Gaming Act. The Chairman, Doug Sam disagrees and believes that Mr. Rolfes’ appointment is temporary. The Gaming Authority is still searching for a permanent Director that will be hired through Band employment process. The employment process usually consists of posting a position, interviewing several candidates, and selecting the person most qualified for the position.

### **Question Presented**

There are two questions presented by this Opinion: First, a threshold question is what obligation does the Solicitor General have to provide legal representation to the Gaming Authority, and whether providing a statutory interpretation of the Gaming Act presents a conflict of interest when the Solicitor General has a statutory obligation to interpret the law of the Mille Lacs Band under 4 MLBSA § 18(d). The second and primary question regards the interim appointment of Mr. Rolfes, is his assertion that his appointment is a permanent appointment correct, when the Gaming Act allows the Chairman to make interim appointments and the Gaming Board meeting minutes state that the appointment was for an Interim Director.

## Analysis

This analysis first addresses the potential conflict of interest and then addresses the Interim appointment issue presented by Mr. Rolfes. The Solicitor General finds that he does not have a duty to represent the Gaming Authority under Title 15 of the Gaming Regulatory Act. The Gaming Authority is allowed to retain consultants and enter into contracts as it may deem necessary. 15 MLBSA § 11(d). Given that the Solicitor General is not required to represent the Gaming Authority, the next question is whether the Solicitor General is allowed to represent the Gaming Authority. Restated, the question is whether providing legal advice to the Gaming Commission presents a conflict of interest. The conflict of interest provision states, "A lawyer shall not represent a client if the representation of that client will be directly adverse to another client." 52 M.S.A. RPC Rule 1.7. The Solicitor General's primary duty is to represent the Band. 4 MLBSA § 18. The Solicitor General interprets the Band to mean the Elected and Appointed Officials of the Band, and others when it is in the best interest of the Band. In this case, a conflict does not exist preventing the Solicitor General from representing the Gaming Authority; however, the Solicitor General has no affirmative responsibility to represent the Gaming Authority or any independent board like the Corporate Commission, Circle of Health, WasteWater Inc, or any other independent entity separate from the Mille Lacs Band.

The Solicitor General, however, does have a responsibility to provide interpretations of the laws of the Band as Solicitor General Opinions. 4 MLBSA § 18(d). The interpretation of the Gaming Act does fall within the responsibility of providing statutory interpretation and thus does not create a conflict of interest. Therefore, this Solicitor General Opinion interpreting the Gaming Act complies with the Solicitor General's statutory obligations. The Solicitor General does strongly suggest that the Gaming Authority obtain outside counsel to resolve any further

disputes. The Solicitor General will not provide further legal assistance to the Gaming Authority.

This brings us to the second issue: whether Mr. Rolfes' interim appointment is a permanent appointment, when the Gaming Act allows the Chairman to make interim appointments and the Gaming Board meeting minutes state that his appointment was for an Interim Director position. The Gaming Act states, "The Director shall be appointed by the Board by a majority vote and shall report to the Board as the Board requires." Gaming Regulatory Act section 12(a)(2). Here Mr. Rolfes incorrectly interprets the December 31, 2003, action by the Board as a permanent appointment. The December 31, 2003 meeting minutes plainly state that Mr. Rolfes' appointment was a temporary appointment and that the Gaming Authority reserved all rights to post for a permanent Director.

This statutory interpretation requires construing the Gaming Regulatory Act 15 MLBSA § 12(a)(2). When interpreting statutes, courts will first look to the plain meaning of the language itself. The Mille Lacs Band Court of Appeals has found that it is a canon of statutory construction that plain meaning of legislation should be conclusive and the starting point in every case involving statutory construction of a statute. Interpretation of Solicitor General Opinion, 15 OSG 92 (Ct. of Appeals. 1993). The plain meaning of the Director Appointment provision of 15 MLBSA § 12(a)(2) and December 31, 2003 Board Resolution when read together is that the Board makes the appointment of the Director. If the Board wants to name an Interim Director, then the Gaming Act allows vacancies to be filled by interim appointment. If there is a vacancy, then the Chair may appoint an Interim Director. 15 MLBSA § 12(a)(5). Here, a majority vote of the Board approved Mr. Rolfes interim appointment, but nothing in the Gaming Act prohibits the Board from making an interim appointment. Moreover, the resolution passed by the Board

clearly states that the appointment was for an Interim Director. Webster's Dictionary defines interim as "an intervening period. Belonging or taking place during an interim: Temporary." This situation is analogous to hiring a temporary employee. The temporary employee lacks the rights and benefits of a full time permanent employee. Here, Mr. Rolfes also lacks the rights and benefits of permanent Director by virtue of his interim status. Mr. Rolfes may have had a long and honorable tenure as an employee of the Corporate Commission, but he is an interim appointment and is not a permanent appointment as defined under section 12(a) (2) of the Gaming Act until the Board appoints him as a permanent Director. While it is certainly understandable that Mr. Rolfes may not find a temporary position acceptable, it is clear that he was offered the position of Interim Director.

#### **Conclusion**

Therefore, this Opinion finds Mr. Rolfes is a temporary employee and that the Gaming Board may post for a permanent Director if they so desire.

Dated this 11th day of February, 2004

  
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John Swimmer, Solicitor General, Mille Lacs Band  
of Ojibwe Indians

OFFICIAL SEAL OF THE BAND