



No Review  
5-2

MILLE LACS BAND OF CHIPPEWA INDIANS  
*Judicial Branch of Tribal Government*

Opinion of the Solicitor General

08-056-83

TO: Douglas Sam, Speaker of the Assembly .  
FROM: Jay Kanassatega, Solicitor General  
SUBJECT: INTERPRETATION of Article X, Constitution of Minnesota Chippewa  
Tribe and other related issues.

You have requested an opinion and interpretation of Article X of the Constitution of the Minnesota Chippewa Tribe and Band Statute 1002-MLC-2, Sections 8 and 20 regarding impeachment and expulsion of an elected or appointed official. Additionally, you have raised questions regarding proper procedural matters and circumstances which may have a direct bearing on any such impeachment hearing.

Band Statute 1002-MLC-2, Section 20 provides the legal mechanism under Band law for the impeachment and subsequent removal of any elected official or appointed officer of the Band. Additionally, the statute references Article X of the Constitution of the Minnesota Chippewa Tribe. In a matter of impeachment, the Chief Executive becomes a member of the Legislative branch of tribal government and the two units, Executive branch and Legislative branch, form a joint session of government. This joint session of the Band Assembly has authority over matters of discipline of elected officials and appointed officers of the Band. It has the power to censure, issue articles of impeachment, hold formal court procedures and judge the innocence of guilt of the concerned individual. In matters of this type, the law provides no appeal to the Court of Central Jurisdiction or the Tribal Executive Committee. The joint session of the Band Assembly can only conduct governmental business that is directly related to any censure, impeachment or expulsion action.

This section also provides for the registered vote of the Chief Executive and the Speaker of the Assembly and that no official may vote on any Article of Impeachment in which they are the topic of the impeachment proceeding. It is at the point of reference to the Constitution of the Minnesota Chippewa Tribe where matters become unclear and require this opinion and interpretation. My review of Article X did not establish a solid theoretical or legal base for direct applicability with regard to vacancy and removal at the Band level. A sectional review of this Article is therefore necessary, as well as an oversight review to determine any and all appropriate linkages.

PHASE I: ARTICLE X

Article X - Section 1: Any vacancy in the Tribal Executive Committee shall be filled by the Indians from the reservation on which the vacancy occurs by election under rules prescribed by the Tribal Executive Committee. During the interim, the Reservation Business Committee shall be empowered to select a temporary Tribal Executive Committee member to represent the reservation until such time as the election herein provided for has been held and the successful candidate elected and seated.

Interpretation: This section provides for a constitutional mechanism to fill a vacancy on the Tribal Executive Committee. Temporary vacancies may be filled by the Band Assembly upon the nomination by the Chief Executive until a legal election is held and the winner determined and seated. This section does not however provide for a constitutional mechanism to fill a vacancy within the membership of the Band Assembly. This holding is supported by the fact that this Constitution is one for the joint group of reservations and not specifically for any one Band/Reservation. Absent specific Constitutional authorization of such, therefore, constitutional references are primary to the Tribal Executive Committee and not to the Band Assembly.

The Band Assembly in enacting legislation for filling any vacancy in the position of Chief Executive or Speaker of the Assembly would be bound by this section if it desires to have representation on the Tribal Executive Committee. It would be unlawful, however, for the Tribal Executive Committee to deny full voting rights or privileges to any temporary replacement lawfully nominated by the Chief Executive and confirmed by the Band Assembly as this would constitute a civil rights violation against the Band.

Most governmental legislative bodies provide for a mechanism to censure and discipline their members. With regard to the Tribal Executive Committee, no such power exists. Rather, this responsibility falls to the Band Assembly through its promulgation of laws.

Article X, Section 2: The Reservation Business Committee by a two-thirds (2/3) vote of its members shall remove any officer or member of the Committee for the following causes:

- {a} Malfeasance in the handling of tribal affairs.
- {b} Dereliction or neglect of duty.
- {c} Unexcused failure to attend two regular meetings in succession.
- {d} Conviction of a felony in any county, state or Federal court while serving on the Reservation Business Committee.
- {e} Refusal to comply with any provisions of the Constitution and Bylaws of the Tribe.

The removal shall be in accordance with the procedures set forth in Section 3 of this Article.

**Interpretation:** The Chief Executive and Speaker of the Assembly are the Constitutional officers of the Mille Lacs Band as concerned with membership in a body called the Tribal Executive Committee. Both officers have an opportunity through an internal elective process to become officers of the Tribal Executive Committee. Should they fail in any elective process or choose not to be a candidate, they become members of the Executive Committee. Since the Tribal Executive Committee does not have the power to determine its membership and can not remove by its own action a representative from Mille Lacs, I am not convinced that Section 2 is directly applicable to the removal of a member of the Band Assembly. Rather, I think it refers to the removal of either of the Constitutional officers since they sit within a tribal forum, as well as within a band forum.

Additionally, Band Statute 1002-MLC-2, Section 2 (b) clearly states,

"The Band Assembly shall establish rules of its proceedings, decide upon its adjournment, discipline its members through censure for disorderly conduct but not twice for the same offense."

Here, consistent with the above thought of lack of tribal jurisdiction, the Band Assembly retained authority over its elected officials consistent with the Constitution of the Chippewa Tribe as detailed in Article 4, Section 1 and again here in Section 2. Therefore, the Band is only slightly restricted from removing the Chief Executive and Speaker of the Assembly but for causes of action listed in this Section. Although, if either were removed for other like serious offenses, it is highly spurious as to the Tribal Executive Committee's authority to challenge any such action since it lacks subject-matter jurisdiction over its membership. Specific to the removal of an appointed officer of the Band, Band Statute 1002-MLC-2, Section 20 again clearly establishes subject-matter jurisdiction to the joint session of the Band Assembly.

**Article X, Section 3:** Any member of the reservation from which the Reservation Business Committee member is elected may prefer charges by written notice supported by the signatures of no less than 20 percent of the resident eligible voters of said reservation, stating any of the causes for removal set forth in Section 2 of this Article, against any member of members of the respective Reservation Business Committee. The notice must be submitted to the Business Committee. The Reservation Business Committee shall consider such notice and take the following actions:

- (a) The Reservation Business Committee within fifteen (15) days after receipt of the notice of charges shall in writing notify the accused of the charges brought against him and set a date for a hearing. If the Reservation Business Committee deems the accused has failed to answer charges to its satisfaction or fails to appear at the appointed time, the Reservation Business Committee may remove as provided in Section 2 or it may schedule a recall election which shall be held within thirty (30) days after the date set for the hearing. In either event, the action of the Reservation Business Committee or the outcome of the recall election shall be final.
- (b) All such hearings of the Reservation Business Committee shall be held in accordance with the provisions of this Article and shall be open to the members of the Reservation. Notices of such hearing shall be duly posted at least five (5) days prior to the hearing.
- (c) The accused shall be given opportunity to call witnesses and present evidence in his behalf.

Interpretation: The first sentence of this section is additional justification of the Tribal Executive Committee's lack of subject-matter jurisdiction. "Any member of the Reservation (Leech Lake, White Earth, Grand Portage, Nett Lake, Fond du Lac and Mille Lacs) from which the Reservation Business Committee member is elected (one must be the Chief Executive or Speaker of the Assembly to be a Constitutional Officer, thus Tribal Executive Committee delegate or in the Band Assembly in the case of a vacancy to be a Tribal Executive Committee delegate) may prefer charges by written notice supported by the signatures of no less than 20 percent of the resident eligible voters of said Reservation" . . .

For Section 3 to be equitable to all Reservations and applicable to all elected officials from each reservation, some fair amount of signatures on a removal petition are required and in this case, it is established at no less than twenty (20) percent. If, for example, there exists at least one hundred (100) eligible voters on each reservation, then to remove, twenty resident eligible voters must petition. The higher the number of eligible voters, the higher the number of signatures are required to reach the twenty (20) percent level. The lower the number of eligible voters, the lower the number of signatures would be required to reach the twenty (20) percent level. If due process and equal protection are the standards of Constitutional supremacy, and Article XIII clearly mandates this, then for this Section to be applicable to the Chief Executive and each member of the Band Assembly, the twenty percent figure for petition must meet some sort of Constitutional equality standard or risk a legal Constitutional challenge to an across the board application. since District Representatives do not possess large electorates equal to that of Constitutional officials (Chief Executive - Speaker of the Assembly), they are most effected by the lack of equality

in numbers, via a removal petition. Thus, for these reasons, I can not legally conclude that the writers of the Constitution purposefully intended this Section to be applied across-the-board to all elected officials because of the clear Constitutional problems of equality. Whereas, on the other hand, equality in the electorate does exist for the Chief Executive and the Speaker of the Assembly.

Article X, Section 4: When the Tribal Executive Committee finds any of its members guilty of any of the causes for removal from office as listed in Section 2 of this Article, it shall in writing censor the Tribal Executive Committee member. The Tribal Executive Committee shall present its written censure to the Reservation Business Committee from which the Tribal Executive Committee member is elected. The Reservation Business Committee shall thereupon consider such censure in the manner prescribed in Section 3 of this Article.

Interpretation: It is with this section that further evidence can be found to justify the lack of subject-matter jurisdiction with the Tribal Executive Committee to formally discipline one of its own. Here, the Tribal Executive Committee must present its evidence in the form of a censure resolution to the Band Assembly who may consider such censure in the manner prescribed in Section 3. This section therefore establishes the foundation for a probable cause hearing by the joint session of the Band Assembly on conduct of the Chief Executive or Speaker of the Assembly. The jurisdiction of the Tribal Executive Committee herein terminates and does not progress to the point of a formal vote to accept the Articles of Impeachment which would constitute the second step of any removal effort. This authority can only be exercised by the joint session of the Band Assembly as established in Band Statutes 1002-MLC-2, Sections 8 and 20. Additionally, this section does not provide subject-matter jurisdiction for the Tribal Executive Committee to censure a District Representative to the Band Assembly. Here, there would exist an inherent lack of equality amongst all the elected officials of a reservation if this section were to have applicability across-the-board. If the writers of the Constitution were concerned with Article XIII, they could not have knowingly also permitted a double jeopardy situation which is apparent with this section. Therefore, the censure of a member of the Tribal Executive Committee must constitute probable cause and be sustained by the formal resolution of the joint session of the Band Assembly before it can become an official act of censure by the Legislative branch of government.

Article X, Section 5: In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article, the reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter before the reservation electorate for their final decision.

Interpretation: Once again, the equal protection clause of Article XIII can not be met if this Section is applied across-the-board because of the gross inequity of the numbers which constitutes the electorate for each position. Additionally, the key words are, "the Reservation membership." The reservation membership can not be directly linked to mean the membership of a district within the reservation, because that also fails to meet the equal protection test. With regard to the failure of the joint session of the Band Assembly to act in a disciplinary manner against a Constitutional official, the people who comprise the Band's electorate may petition the Band Assembly for the purpose of holding an election on the re-call effort. The Band Assembly and the joint session of the Band Assembly would be bound by the results of the re-call effort.

Overview of Article X: It is the responsibility of the joint session of the Band Assembly to discipline any elected official or appointed officer of the Mille Lacs Band. Since Article X does not meet the equal protection and equal rights clauses contained in Article XIII, in a specific across-the-board test from the Chief Executive to the District Representative it would be a severe Constitutional error to attempt its application by inference or implication. Rather, the Band Assembly should enact new legislation and procedure to discipline any official or officer which will pass civil rights guarantees listed in Article XIII of the Constitution of the Minnesota Chippewa Tribe and Band Statute 1011-MLC-5.

A review of Article X en toto establishes the lack of jurisdiction for the Tribal Executive Committee to discipline one of its members (Section 4). Further, the Committee lacks jurisdiction to determine its membership (Section 1). Such jurisdiction does exist for the Band Assembly in the case of determining its membership (Section 1 and Band Statute 1002-MLC-2, Section 8) and for official acts of discipline (Section 3), for its Constitutional officers only. Separate authority under Band Statute 1002-MLC-2, Section 20 exists for an across-the-board discipline of elected officials and appointed officers.

In summary, it is the opinion of the Solicitor General that Article X of the Constitution of the Minnesota Chippewa Tribe does not comply with equal protection standards under Constitutional law. A second problem is found in the joint session of the Band Assembly's inability to apply various provisions of Article X to accord equal rights to all five elected officials. Therefore, as a result of these important constitutional issues, I find the Band Assembly is not legally bound by provisions of Article X of the Constitution of the Minnesota Chippewa Tribe. The joint session of the Band Assembly should however adopt procedures which accords rights as guaranteed in Article XIII.

PHASE II: QUESTIONS

Question No. 1: What authority does the Band Assembly possess in areas of removal and impeachment? Does the Band Assembly adhere to Article X of the Constitution of the Minnesota Chippewa Tribe?

Response No. 1: The Band Assembly possesses no authority in the area of removal or impeachment other than the enactment of law which governs questions of who, what, when, where and why of removal or impeachment. Band Statute 1002-MLC-2, Section 20 delegates this authority to the "Joint Session of the Band Assembly". It is the Joint Session which possesses plenary power over matters of this type. In the absence of Band Statute, the Joint Session may adopt policies and procedures necessary for causes of action in the area of removal, impeachment and expulsion.

The Joint Session is not bound by Article X of the Constitution but rather should be guided by Article XIII due to constitutional deficiencies found in Article X. Refer to analysis in Phase I of this opinion.

Question No. 2: Does the United States Department of Interior have any regulatory authority over action of another government within its jurisdiction? Do they possess any plenary power over the membership of the Band?

Response No. 2: The only authority possessed by the Secretary of Interior which was conferred by the Band is found in Article XI, Section 1 (d) of the Constitution of the Minnesota Chippewa Tribe regarding the enactment of ordinances which levy fees or licenses on non-members or non-tribal organizations doing business within trust territory under the jurisdiction of the Band. No constitutional authorization can be found granting plenary power over the membership of the Band.

Question No. 3: What formal actions can the Band Assembly take in the absence of a District Representative. What formal actions can occur if a District Representative has been formally charged under Articles of Impeachment? Does any elected official or appointed officer retain their authority once Articles of Impeachment have been voted?

Response No. 3: In the absence of any District Representative, the Band Assembly can not convene and conduct official acts of the Legislative branch of government. If, however the Assembly is in recess status, the other two Representatives can re-convene at the appointed time and continue to conduct official business. Band Statute 1002-MLC-2, Section 10 establishes the quorum as three members. The quorum of three can not include the Speaker of the Assembly as Section 7 of this same statute prohibits him from being a voting members except under conditions listed in Section 20.

The Joint Session of the Band Assembly can convene with plenary power over matters related to the censure, impeachment and/or expulsion of an elected official or appointed officer provided those actions do not infringe upon Constitutional or statutory civil rights guarantees. The Band Assembly, unless it was in recess status, could conduct no official acts of government. If it were in recess however, it would have first jurisdiction over a member of the Band Assembly provided any such action stops short of the formal vote to accept any Articles of Impeachment. The Band Assembly has no disciplinary jurisdiction over the Chief Executive, the Speaker of the Assembly or any appointed officer. Any such action against these individuals must originate in the Joint Session of the Band Assembly.

Depending upon the legal status of the Band Assembly at the time, the Joint Session of the Band Assembly can by formal resolution suspend the rights, privileges, responsibilities and obligations of any Band official or officer in compliance with provisions listed in Band Statute 3011-MLC-5, Section 11, assumption of guilt under cultural law, once said official or officer has been officially served with Articles of Impeachment or at the time of the formal vote to accept any said Articles of Impeachment by the Joint Session of the Band Assembly.

Question No. 4: What are the rights of the accused official or officer in any expulsion attempt? What are the rights of the Band Assembly?

Response No. 4: Any accused official or officer shall have all rights as delineated in Article XIII of the Constitution of the Minnesota Chippewa Tribe and Band Statute 3011-MLC-5.

It is the legal duty of the Joint Session of the Band Assembly to ensure each official or officer receives these rights in any expulsion attempt. The rights of the Joint Session of the Band Assembly are treaty rights which are promulgated under their own resolution or established by Band Statute. The accuser, in any such action, must be the Mille Lacs Band of Chippewa Indians.

Question No. 5: Does the accused need be present at any expulsion hearing if all possible avenues of finding the accused are exhausted?

Response No. 5: It is the obligation of the Joint Session of the Band Assembly to: a). Notify the accused through United States Mail with the parcel registered and certified, return receipt requested at their last known address a certified copy of all pertinent resolutions and the Articles of Impeachment within twenty-four (24) hours of the action of the



Opinion of the Solicitor General

DA-0SG-83

Page 9

Joint Session of the Band Assembly; 2}. Notify the accused through regular United States Mail at their last known address with the appropriate documents; 3}. Attempt personal service of said documents by the Band's law enforcement officers at least two times prior to the hearing, and; 4}. Public posting of all pertinent documents in conspicuous locations in all three district centers of the reservation. If these obligations are fulfilled and the accused remains unserved, the Joint Session may proceed with the expulsion hearing ex parte under conditions of special default on behalf of the accused.

Question No. 6: Does the Band Assembly need a petition of the eligible voters within the district(s) of the Reservation before instituting disciplinary actions against any official or officer or can they proceed under powers granted under Article X of the Constitution of the Minnesota Chippewa Tribe?

Response No. 6: The Joint Session of the Band Assembly possesses the necessary authority under Band Statute 1002-MLC-2, Sections 8 and 20 to initiate disciplinary action against any elected official or appointed officer of the Band. Further authorization is available through Article VI, Section 1 (e) of the Constitution of the Minnesota Chippewa Tribe. Additionally, popularly elected officials collectively possess the power to take such actions as are necessary within Constitutional and statutory limitations to protect the best interests of the Band as a whole.

Question No. 7: Can the Band Assembly act on an expulsion matter when the accused is without legal counsel?

Response No. 7: Band Statute 1011-MLC-5, Section 6 grants any person in a criminal or civil proceeding "..... at his or her own expense, to have the assistance of counsel for his or her defense." An expulsion hearing is considered to be a civil proceeding therefore, if the accused desires legal counsel, the Joint Session of the Band Assembly can not proceed in any hearing without the participation of that counsel.

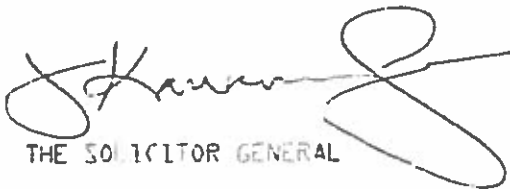
Question No. 8: Can the Band Assembly conduct an expulsion hearing under procedures authorized for the Court of Central Jurisdiction?

Response No. 8: The Joint Session of the Band Assembly may adopt procedures of the Court of Central Jurisdiction as rules and regulations for an expulsion hearing. If such procedures are not adopted, the Joint Session

Opinion of the Solicitor General  
08-056-83  
Page 10

of the Band Assembly must take care to ensure any new procedures do not infringe on any Constitutional or Statutory civil right guarantees.

Should you require any additional information or any clarifications, please do not hesitate to contact me. Due to the importance of this opinion, the Chief Justice has convened an emergency session of the full Court of Central Jurisdiction for Monday, October 3, 1983 at 10:00 a.m. at the Government Center Conference Room at Vineland, Minnesota.



THE SOLICITOR GENERAL

Dated at Vineland, Minn.

September 27, 1983

OFFICIAL SEAL OF BAND