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THE MILLE LACS BAND OF
OJIBWE INDIANS

Executive Branch of Tribal Government

SOLICITOR'S OPINION 97-17

PROCEDURAL HISTORY

On October 18, 1997, the Solicitor General received a written request dated October 14, 1997, from Secretary-Treasurer David G. Matrious asking for a Solicitor's Opinion clarifying the meaning and effect of several different provisions of Band Statutes as they relate to the Corporate Commission of the Mille Lacs Band of Ojibwe.

QUESTIONS PRESENTED

- I. Does the Administration Policy Board have jurisdiction over Corporate Commission employees? **No, in most cases, but yes for enforcement of the Indian Employment Rights Program (18 MLBSA § 401-428).**
- II. Does the Secretary-Treasurer have the authority to issue Secretarial Orders [to] levy, impound or attach financial accounts of corporate entities of the Band? **No.**
- III. Do elected officials have the authority to remove a Corporate Commission board member other than the Commissioner, and if so, what is the process? **Yes, see discussion below for the process.**
Does having corporate employees enrolled in government benefit programs, using the Administration Policy Board grievance procedure, or taking Band holidays factor into the conclusion? **No.**
- IV. Can Corporate Orders issued pursuant to 16 MLBSA § 111 be reviewed or annulled by the Solicitor General or Band Assembly? **No.**

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).

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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 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

I. Does the Administration Policy Board have jurisdiction over Corporate Commission employees?

The first issue that the Secretary-Treasurer has asked for an opinion on is whether the Administration Policy Board has jurisdiction over Corporate Commission employees, particularly under 4 MLBSA § 8, 7 MLBSA § 3, and 18 MLBSA § 401-428. Each of these provisions will be addressed in the order listed.

In 4 MLBSA § 8, the Administration Policy Board is created within the Executive Branch of the government and given broad responsibility including the power to hire and regulate the performance of employees and to administer all grants and contracts. The Corporate Commission is established under Band law under a separate statute - 16 MLBSA § 1 et. seq. The Corporate Commission has been given a highly unique structure under the statute. The Commission is established as a "**Corporate Body Politic**. As a Corporate Body Politic, the Corporate Commission is both a political subdivision . . . and a separately chartered corporation" under Band law. 16 MLBSA § 101 (emphasis added). The Commission has "members" - the elected leaders of the Band - who serve in a capacity similar to shareholders. 16 MLBSA § 104.

The unique structure of the Commission is rooted in the past experiences in economic development of the Band. As a result of the lessons learned by previous economic development attempts, the Band Assembly and Chief Executive determined that the Commission needed to be a separate entity to ensure, among other reasons, that business decisions were made based only on business considerations and that Band assets were insulated from liability created by economic development activities. See 16 MLBSA § 102(d) and (f), 16 MLBSA § 110. Besides its unique structure, the Corporate Commission is given broad authority to conduct economic development activities. See 16 MLBSA § 106. At the

same time, however, the Band was careful to make sure that the Commission was protected by the sovereign immunity of the Band. 16 MLBSA § 109(a).

The issue presented, then, is how to meld these two separate statutory provisions. We conclude that to subject the Commission to the general jurisdiction of the Administration Policy Board under 4 MLBSA § 8 would violate the expressed legislative intents of insulating business decisions from political pressures and insulating Band assets from liability for economic development activities. 16 MLBSA § 102(d) and (f). Accordingly, the Commission is not subject to the Administration Policy Board's jurisdiction under 4 MLBSA § 8.

In 7 MLBSA § 1-49, general Band government-wide procurement policies are established. One requirement is that any purchase over \$250 must be approved by the Secretary-Treasurer and any purchase over \$1,000 must be approved by the Secretary-Treasurer and Chief Executive. 7 MLBSA § 11(d). Requiring the Corporate Commission to gain the approval of at least one elected official, and in some cases two, for any purchase over \$250 would obviously frustrate the express legislative intent of separating business decision making from political decision making. In addition, allowing elected officials to make day-to-day decisions for the Commission such as what purchases can be made would be counter to the express legislative intent of forming the Commission in order to insulate the Band from any business liabilities.

A corporation, such as the Corporate Commission, is considered a distinct person under the law. It can be sued and held liable for its unlawful actions. Shareholders are generally protected from individual liability for the corporation's actions because the corporation is considered a separate "person." This protection for shareholders is referred to as the "corporate veil." If the shareholders, or "members" in the case of the Corporate Commission, become involved in the day-to-day decision making of the corporation, then they could potentially be held liable in suits against the corporation because its status as a separate "person" has not been respected. Imposing this kind of liability on shareholders is called "piercing the corporate veil."

While we conclude that the Commission is not required to comply with the general procurement policies of the Band, we also note that to the best of our knowledge there are currently no formal procurement policies in place at the Commission level. Therefore, the Solicitor General's Office strongly encourages the Corporate Commission to adopt procurement policies as soon as possible and suggests that in the interim the Commissioner consider issuing an order adopting the Band's policies, substituting the Commissioner where approval is required by the Secretary-Treasurer or Chief Executive under the Band policies.

Next we turn to 8 MLBSA § 401-428, which establishes an Indian Employment Rights Program and authorizes the Administration Policy Board to administer the program. The program is reservation-wide and covers all employers engaged in work on the reservation, including all companies and tribal governmental agencies. This is a regulatory program that imposes specific employment requirements on all employers within the reservation with the exception of federal, state and local governmental entities. The specific problem that the program is meant to remedy is the historically high unemployment of Indian people within the reservation.

An important distinction is that unlike the previous statutory provisions discussed above, the Indian Employment Rights Program is a regulatory scheme of general applicability much like

environmental or solid waste regulation. It applies to entities both within and outside of the Band government. While the Band government, through the Administration Policy Board, administers the program, this administration of a regulatory scheme does not blur the lines of separation between the general Band government and the Commission any more than it does for any construction or other contractor operating on the reservation. We conclude, therefore, that it does not frustrate the legislative intent in creating the Commission to subject it to a general regulatory scheme, such as the Indian Employment Rights Program, that applies to any other business entity on the reservation.

II. DOES THE SECRETARY-TREASURER HAVE THE AUTHORITY TO ISSUE SECRETARIAL ORDERS [TO] LEVY, IMPOUND OR ATTACH FINANCIAL ACCOUNTS OF CORPORATE ENTITIES OF THE BAND?

The Secretary-Treasurer's general power to "levy, impound, or attach any financial account of the Non-Removable Mille Lacs Band of Chippewa Indians or any political subdivision thereof" is found in 3 MLBSA § 7(f). As discussed earlier, however, the Corporate Commission is established as a unique entity, "a **Corporate Body Politic.**" 16 MLBSA § 101. While the Commission is given some aspects of both a corporation and a political subdivision under the statute, it is clear that it does not fit under the definition of either term alone. The Commission is a unique creation, unlike anything else under Band law.

We conclude that as a Corporate Body Politic the Commission falls outside of the scope of 3 MLBSA § 7(f). Even if one were to decide that the Commission fell under the definition of "political subdivision," and we do not, we would conclude that interpreting the Secretary-Treasurer's authority to levy, impound or attach accounts to include such power over the Commission would be incompatible with the legislative intent in creating the Commission of keeping it separate in order to keep politics out of business decisions and insulate the Band from any liabilities arising from economic development efforts.

III. DO ELECTED OFFICIALS HAVE THE AUTHORITY TO REMOVE A CORPORATE COMMISSION BOARD MEMBER, AND IF SO WHAT IS THE PROCESS? DOES HAVING CORPORATE EMPLOYEES ENROLLED IN GOVERNMENT BENEFIT PROGRAMS, USING THE ADMINISTRATION POLICY BOARD GRIEVANCE PROCEDURE, OR TAKING BAND HOLIDAYS FACTOR INTO THE CONCLUSION?

Commission board members other than the Commissioner of Corporate Affairs may be removed and the specific process is found in the By-Laws of the Commission. Once appointed such board members may only be removed prior to the expiration of their four-year term by the Court of Central Jurisdiction for "serious inefficiency or neglect of duty or for misconduct in office." By-Laws § 2.7. Again, the uniqueness of the Commission and the great pains to which the Assembly went to insulate business decisions from political pressures is evident by the choice to make it difficult to remove board members and by giving the ultimate authority to do so not to the more political branches of the government, but to the judiciary.

The fact that some Commission employees may be enrolled in certain government benefit programs, may have used the Administration Policy Board's grievance process, or follow the same holidays as the Band does not alter our conclusion on the removability of Commission board members, which is expressly defined by its By-Laws. If this question was intended to ask

whether these facts if true would alter any of our other conclusions in this opinion, the answer is also no. The questions that are addressed in this opinion all deal with the power of the Band government over the Commission, which is determined from examining the authority given to various governmental entities. If the entity does not have the authority in the first instance, the fact that the Commission may voluntarily choose to subject itself to that power does not change the fact that the entity does not have the authority to impose its power absent the Commission's consent. The authority to impose its will without consent either exists or it does not.

A separate question is if the Commission itself blurs the lines of separation between itself and the Band, could liability arising from economic activities potentially be imposed on the Band by a court. The answer is yes. Any blurring of the separation, whether as a result of actions by the Band or the Commission, provides arguments that a litigant may use to try to "pierce the corporate veil" that has been established to protect the assets of the Band. That it not to say that the Commission cannot adopt its own holidays or benefits programs which are the same as the Band's. The decision, however, should be one made by the Commission and not imposed by the Band.

IV. CAN CORPORATE ORDERS ISSUED PURSUANT TO 16 MLBSA § 111 BE REVIEWED OR ANNULLED BY THE SOLICITOR GENERAL OR THE BAND ASSEMBLY?

There two separate sections in the Corporate Commission statute which empower the Commissioner. First, in 16 MLBSA § 5 the Commissioner is given certain "ministerial" powers, including the power to set up systems to administer the Business Corporation Act, the Nonprofit Corporation Act, and the Gaming Control Ordinance. Later, in 16 MLBSA § 111 the Commissioner is given certain "corporate duties and responsibilities" such as serving as the Chief Operating Officer of the Commission. Each of these two distinct powers have their own provision allowing the Commissioner to issue orders. Under 16 MLBSA § 6(a), the Commissioner can issue **Commissioner's Orders** pursuant to his ministerial powers. Under 16 MLBSA § 111(b)(1) the Commissioner can issue **Corporate Orders** pursuant to his corporate powers.

The power to review and overturn a **Corporate Order** involving the Commissioner's corporate duties and responsibilities is specifically given to the Commission board. 16 MLBSA § 111(b)(2). This is very different from the power to review and overturn **Commissioner's Orders** involving ministerial duties, which is vested Band Assembly. 16 MLBSA § 6(b). This difference within the same title can only be interpreted to reflect a legislative intent to treat orders deriving from the Commissioner's corporate powers differently. Therefore, we conclude that **Corporate Orders** issued pursuant to 16 MLBSA § 111 can only be reviewed or annulled by the Commission board.

Dated this 3RD day of November, 1997.



James M. Genia, Solicitor General

BAND SEAL



THE MILLE LACS BAND OF OJIBWE INDIANS

Legislative Branch of Tribal Government

DECIDED
10/16/97

October 14, 1997

James Genia

Solicitor General
Mille Lacs Band of Ojibwe
HCR 67, Box 194
Onamia, MN 56359

Dear Solicitor:

This letter is a request by the Band Assembly, pursuant to 3 MLBSA section 29, to the Solicitor General to issue a Solicitor's Opinion clarifying the following:

- No 1.) Does the Administration Policy Board have jurisdiction over Corporate Commission employees? (4 MLBSA sec. 8, 7 MLBSA sec. 3, or 18 MLBSA chapter 5)
- No 2.) Does the Secretary/Treasurer have the authority to issue Secretarial Orders or levy, impound or attach financial accounts of corporate entities of the Band?
- 3.) Do the elected officials as shareholders/members or as elected officials have the authority to remove a Corporate Commission board member (other than the Commissioner) and if so what is the process? (16 MLBSA sec. 1101(b)(3) says non-voting members have the power to appoint but does not mention removal, compare with 14 MLBSA sec. 3 and Housing) Does having corporate employees enrolled in government benefit programs, using the Administration Policy Board grievance procedure, or taking Band holidays factor into the conclusion?
- 4.) Can Corporate Orders issued pursuant to 16 MLBSA sec. 111 be reviewed or annulled by the Solicitor General or Band Assembly? B/A + MARGE PROB. O.K.

Please provide me with a copy of your Opinion within 14 days. Thank you for your attention to this matter.

MARGE
REGULATORY
STUFF
BUDGET BIZ DECISIONS.

David G. Matrious
Speaker of the Assembly

STEP BACKWARDS.
THIS STUFF ALL
DECIDED.

Cc: District Representative
Marge Anderson
Dave Christensen

DC/CJS

ABSENT PRICES
FALL INTO BAND.

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