



THE MILLE LACS BAND OF
OJIBWE INDIANS

Office of the Solicitor General

SOLICITOR'S OPINION 30-04

Amendment
Jan 13, 2005

Introduction and question presented.

On December 20, 2004 Chief Executive Melanie Benjamin requested a Solicitor General's Opinion regarding the following question:

Does the language of 4 MLBSA §10 authorize the Commissioner of Administration to assume the duties¹ of the Commissioner of Corporate Affairs when the Commissioner of Corporate Affairs position is vacant?

Rules of Interpretation.

Pursuant to 4 MLBSA §25 the Solicitor General is required to provide a written opinion to the Chief Executive if there be any doubt as to the proper interpretation of a law adopted under Title 4 of the Mille Lacs Band Statutes. The Solicitor General is required to liberally construe the provisions of Title 4 so as to provide for the achievement of its purposes.

The purpose of Title 4 is "to protect the general welfare of the Non-Removable Mille Lacs Band of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers."

Discussion.

Title 4 MLBSA §10(a) states that the Commissioner of Administration shall have the authority "to act in the absence of any other Commissioner". This section does not authorize Commissioner of Administration action when another commissioner position is vacant.

A "vacancy" occurs when a position is unoccupied. An "absence" refers to a state of nonattendance such as being away from a position, or not being present at a position, or missing from a position.

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This question asked arose because the current Commissioner of Corporate Affairs will end his service term at 12:00 a.m. on January 1, 2005. After that, barring any unforeseen and confirmed appointment of another to the position of Commissioner of Corporate Affairs before the end of 2004, the position will be vacant.

The authority and responsibility of the Chief Executive to appoint a Commissioner of Corporate Affairs is unquestioned. 4 MLBSA §§ 4, 6. However, this appointment must be confirmed by the Band Assembly. 4 MLBSA § 6(b).

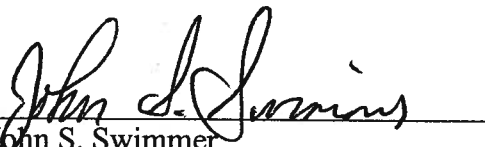
The Chief Executive requested that the current Commissioner of Corporate Affairs be reappointed to another term. The choice of person to be appointed belongs to the Chief Executive. However, it lies with the Band Assembly to confirm that choice. The request for appointment was not confirmed by the Band Assembly.

As the Chief of Staff within the Executive Branch of Band Government the Commissioner of Administration is given extra-jurisdictional authority "to sign by authorization *all vouchers and expenditures of appropriated funds of the Executive Branch* pursuant to the provisions of Band Statute". 4 MLBSA §10(c).ⁱⁱ The only authority the Commissioner of Administration may exercise in the event of a vacancy of another commissioner position is signature authority regarding *all vouchers and expenditures of appropriated funds* within the vacant commissioner's jurisdiction.

Answer.

According to the language of 4 MLBSA §10 the Commissioner of Administration may not assume *all* the duties of the Commissioner of Corporate Affairs when the latter position is vacant. The Commissioner of Administration is authorized according to the language of 4 MLBSA §10 to exercise signature authority regarding all vouchers and expenditures of appropriated funds within the jurisdiction of the Corporate Commission.

Respectfully,


John S. Swimmer
Solicitor General

Dated this 21st day of December, 2004

ⁱ The powers and duties of the Commissioner of Corporate Affairs are set forth in Title 16 of the Mille Lacs Band Statutes. 16 MLBSA §§ 5, 111. These are:

- a. to provide an effective and efficient system of administration for the Mille Lacs Band Business Corporation Act
- b. to provide an effective and efficient system of administration for the Mille Lacs Band Nonprofit Corporation Act
- c. to provide an effective and efficient system of administration and licensing under the Mille Lacs Gaming Control Ordinance
- d. to provide reporting and accounting for a Net Revenue Allocation Schedule in a form prescribed by the Band Assembly
- e. under the terms of the Mille Lacs Band Development Zone Statute to prepare nomination reports, conduct negotiations with developers and investors, enter agreements with such developers and investors, and present such agreements to the Chief Executive and Band Assembly for approval
- f. to provide an effective and efficient administrative system to license and certify Foreign Corporations under the Band's Commercial Licensing Statute
- g. to serve as the Chief Operating Officer of the Corporate Commission
- h. to serve as the Chief Operating Officer, or Board Member other than a CEO of any wholly owned subsidiary
- i. to exercise authority as necessary to carry out the purposes described in Title 16.

ⁱⁱ Compare with 4 MLBSA §7(c) which give executive officers authority to authorize the expenditure of all appropriated funds within their area of subject matter jurisdiction.