



THE MILLE LACS BAND OF
OJIBWE INDIANS

Office of the Solicitor General

Solicitor's Opinion 25-02

On March 7, 2002, the Office of Solicitor General received a request for a Solicitor's Opinion from Sheldon Boyd, Commissioner of Administration, seeking clarification of the following:

There exists a conflict of authority between the District III Representative and the District III Program Administrator. The conflict involves Program Administrators day-to-day administrative authority and the District III Representative's interpretation of Band Statute Title 8 Section 8(6) that gives the representative the authority of "use" of the community center.

Since this request is of general applicability and seeks an interpretation, at least in part, of Title 4 of Mille Lacs Band Statute, Section 25 of Title 4 requires the Solicitor General to give her written opinion on the issue.

Question Presented

What are the powers and duties of the Executive Branch and the District Representatives at the District Community Centers, and how are such powers and duties lawfully exercised pursuant to Band Statute?

Relevant Statute Provisions

Although numerous provisions of Band statute are implicated by the question presented, the two most relevant are:

3 MLBSA § 8(a)(6). Powers and duties of District Representatives

(a) The District Representatives shall have the following individual authority in the exercise of legislative power of Band government:

(6) To authorize the use of district community centers according to written standards that are fair and reasonable.

4 MILBSA § 6 (f). Powers and duties of Chief Executive

The Chief Executive shall have the following authority in exercising the executive powers of Band government:

(f) To act as the custodian of all Band property.

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Duties of Solicitor General - Solicitor's Opinions

Pursuant to 4 MLBSA § 18(d)(1), the Solicitor General has the duty "to interpret all laws and executive, legislative, secretarial and commissioner's orders and policies on behalf of the Non-Removable Mille Lacs Bands of Chippewa Indians." In performing this duty, 4 MLBSA § 19 provides the following legal standard:

- a) The Solicitor General shall have the duty of advocating whatever position he [she] concludes is required by Band Statute in the event of any conflicts within the Executive and or between the Executive and Legislative branches of Band government.

Section 26 of Title 4, and Section 30 of Title 3 (the Title containing provisions discussing legislative authority), also require the Solicitor General to liberally construe the provisions of both Titles "so as to provide for the full force and effect of the purposes therein stated."

Principles of Statutory Interpretation

The principles of statutory interpretation applicable to the courts of the Mille Lacs Band were most clearly delineated by the Court of Central Jurisdiction (Court of Appeals) in a 1993 case, The Interpretation of the Solicitor General 15-0SG-92, 92-CV-5359. In that case, the Court firmly adopted the "Plain Meaning Rule" of statutory construction, meaning that "the particular language of the text is always the starting point on any question concerning the application of that law." Not only is the plain language the "starting point" for any analysis, the Court held that the plain meaning should also be considered *conclusive*, "except in the rare cases in which the literal application of the statute will produce a result demonstrably at odds with the intentions of the drafters" (citing Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)).

Consistent with the Plain Meaning Rule, the Court of Appeals identified the following inquiry for determining statutory meaning: "the meaning of a statute must, in the first instance, be sought in the language in which the legislation is framed," (citing Caminetti v. United States, 242 U.S. 470, 485 (1917)), and the Court identified the starting point for this inquiry as "the language itself" (citing Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975)).

The Court of Appeals decision also identified the process necessary to explain the interplay between various provisions of Band statute:

If one questions the application of the plain meaning rule to a provision of Band statute, he/she must show either that some other section of Band statute *expands or restricts* [italics added] its meaning, i.e., that the provision itself is repugnant to the general purview of the Band statute, or that the Band statute considered in pari materia with other Band statutes, or with the legislative history of the subject matter, imports a different meaning (citing Jankowski v. International Board of Teamsters Local 710 Pension Fund, 673 F.2d 931 (7th Cir. 1982) and State v. Goldschmidt, 494 F. Supp. 93 (D. Me. 1980)).

Finally, the Court warns that it will "not give it [a word] a different meaning," unless "it is obvious to us from the Band statute itself that the Band Assembly intended what it used in a sense different from its common ordinary meaning." Thus, issuing this opinion the Solicitor General is limited by the parameters of the Plain Meaning Rule identified by the Court of Appeals, and by those provisions of Band statute that clearly define the Solicitor's duties under the law.

Discussion

As stated in the request for this Solicitor's Opinion, a conflict has developed between the Executive and Legislative branches of government regarding which branch has statutory administrative authority over the district community centers. The question is whether the Executive branch, as part of its statutory responsibilities as "custodian of all Band property," and exercising its authority over Executive branch employees, has statutory authority over the day-to-day administrative functions of the community centers, or whether the Legislative Branch, through authority granted to the District Representatives by Title 3 of Band statute to "authorize the use of district community centers according to written standards" confers such "day-to-day" administrative authority over the community centers to the District Representatives.

As noted, the authority claimed by the Executive Branch, namely the Commissioner of Administration (and as delegated by the Chief Executive), derives from its inherent executive function, and from 4 MLBSA § 6(f), which grants the Chief Executive the authority "to act as the custodian of all Band property." What does the executive function of being "custodian of all Band property" mean in the context of the question presented? To answer this question, the Solicitor General must apply the Plain Meaning rule.

Plain Meaning - Definitions

"Executive"

As an initial matter, Webster's Dictionary, Tenth Edition, defines "executive" (a word perhaps self-evident, but undefined in Band statute) to mean:

"1. a) of or relating to the execution of the laws, and the conduct of public and national affairs. b) belonging to the branch of government that is charged with such power as diplomatic representation, superintendence of the execution of the laws, and appointment of officials and that usually has some power over legislation (as through veto). 2. a) designed for or relating to execution or carrying into effect. b) having administrative or managerial responsibility."

Black's Law Dictionary, Sixth Edition, defines it similarly to mean, "that [branch] which is charged with the detail of carrying the laws into effect and securing their due observance."

"Legislative"

Webster's Dictionary defines "legislative" to mean:

"1. a: having the power or performing the function of legislating. b: belonging to the branch of government that is charged with such powers as making laws, levying and collecting taxes, and making financial appropriations."

And Black's Law Dictionary:

"Making or giving laws; pertaining to the function of law-making or to the process of enactment of laws."

"Custodian"

Webster's defines "custodian" as the following:

"one that guards and protects or maintains; *especially*: one entrusted with guarding and keeping property or records or with custody or guardianship of prisoners or inmates;" and

Black's Law Dictionary defines custodian/custody:

"General term to describe person or financial institution that has charge or custody of property, securities, papers, assets, etc.," and "the keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected."

Analysis

What authority does Band statute authorize the District Representatives to exercise over the District Community Centers? 3 MLBSA § 8 speaks directly to this issue. Paragraph (a) of Section 3 makes clear that the individual authorities of the District Representatives listed are delegations of the *legislative* functions of Band government - namely, the Band Assembly's authority to make law. 3 MLBSA § 8(a)(6) provides: the District Representatives are delegated the authority "to authorize the use of district community centers according to written standards that are fair and reasonable." The promulgation of such written standards is consistent with the legislative function of the District Representatives, and specifically granted by statute. In fact, such written standards have been adopted for each of the Band's three community centers (District I Policies, amended October 21, 1999; District II Policies amended October 15, 1999; District III Policies, no adoption date). These policies have existed for a number of years, and all appear to authorize the use of the *public* areas of the community centers.¹

¹ Executive Order 033, issued May 3, 1984, also remains in effect for Executive Branch employees. It deals primarily with security at the old Band Community Center, and control over access keys. Apparently there was a problem with unauthorized changing of locks prior to the issuance of the Order. No provision of Executive Order 033 conflicts with this Opinion.

The issue is how this legislative function of "authorizing the use of the district community centers according to written standards that are fair and reasonable" can be read **not** to conflict with the inherent authority of the Executive branch and the Chief Executive's powers as "custodian of all Band property." The vast majority of day-to-day "custodial" functions (here used as inclusively as permitted by the Plain Meaning Rule to mean "guard," "protect" or "maintain") performed at the community centers are performed by Executive branch employees (also used as inclusively as permitted to mean "administrative," "managerial" and "ministerial" employees). Indeed, the number of Legislative branch employees at the centers on a typical day is generally limited to the District Representative and one or two other Legislative branch employees. A number of Executive functions are performed and administered at the same time in designated areas of the community centers on a daily basis. No provision of Band statute gives the District Representatives, or the Legislative Branch, day-to-day supervisory or administrative authority over the Executive branch employees (see 4 MLBSA § 7d, which explicitly places this authority under the executive officers). Instead, Band statutes explicitly limit the authority of the District Representatives at the community centers to the legislative authority granted by Section 8(a)(6) of Title 3.

The issue is further clarified when Title 3, Section 8(a)(6) is read in conjunction with Title 3, Section 8(b), which prohibits the District Representatives from exercising "any of the authority properly belonging to either the Executive or Judicial branches of government." Both provisions are included in Section 8. No similar, explicit limitations are found in the "powers and duties" provisions for the Speaker/Secretary-Treasurer, Chief Executive, Commissioner of Administration or the executive officers.

In the exercise of their delegated Legislative authority at the community centers, the District Representatives must act in accordance with two explicit limitations: (1) any standards they promulgate must be fair and reasonable (a determination not at issue in this Opinion), and (2) in the promulgation of any standards, or any other actions they take in their official capacities, the District Representatives may not exercise any of the authority properly belonging to the Executive or Judicial branches of government (see 3 MLBSA § 8(b)). Finally, they must also act in accordance with the general principles of Separation of Powers found at 2 MLBSA § 3, and act to uphold the laws of the Band as they agreed to do when administered the official oath of office pursuant to 2 MLBSA § 8. All elected and appointed officials of the Band take this same oath, and are likewise bound by its provisions.

What relevant authority does Band statute confer upon the Executive Branch? 4 MLBSA § 2 states: "All executive political authority of the Non-Removable Mille Lacs Bands of Chippewa Indians shall be vested in the Executive Branch of government." 4 MLBSA § 3 describes the powers and duties of the Executive Branch, as 4 MLBSA § 6 does for the Chief Executive. Band statutes do not explicitly describe each and every function considered "executive" in nature. However, 4 MLBSA § 6(f) explicitly confers upon the Chief Executive the authority "to act as custodian of all Band property." Using the most common of meanings of "custodian" as: to "guard," to "protect" to "maintain;" and "executive authority" as: "having administrative or managerial responsibility", and the fact that the majority of employees at the community centers are Executive branch employees performing executive functions, it becomes clear that the day-to-day administrative authority at the community centers lies squarely with the

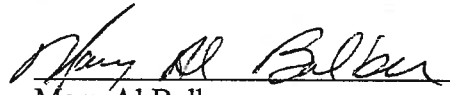
Executive branch of tribal government. No "Plain Meaning" interpretation of "legislative" function could fairly be construed to confer such authority upon the District Representatives. The District Representatives are without the authority to exercise day-to-day administrative authority over Executive branch employees administering programs at the community centers. To do so would violate the explicit limitations found at 3 MLBSA § 8(b), and also would violate the "Division of Powers" provisions found at 2 MLBSA § 3.

There are similar limitations upon the authority of the Executive branch. Under 3 MLBSA § 8(a)(6) the Band Assembly delegated some of its *legislative* authority to the individual District Representatives. Just as the District Representatives are bound by the oath of office to uphold Band statute (see 2 MLBSA § 8), so too are the elected and appointed officials of the Executive branch. Neither branch may lawfully frustrate the ability of the other to perform its authorized functions.

Conclusion

Band statute confers day-to-day administrative authority over the community centers to the Executive branch (see 4 MLBSA §§ 2, 3, 6, and 7), as interpreted by the "Plain Meaning" rule and the common definitions of all relevant terms. Likewise, no "plain meaning" of the term "legislative" can be construed to confer to the District Representatives day-to-day executive administrative authority over the Band's community centers. The legislative authority to promulgate rules for the use of the centers, however, lies squarely with the District Representatives.

Dated this 22 day of April, 2002.


Mary Al Balber
Solicitor General

Solicitor's Opinion __ - __

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There exists a conflict of authority between the District III Representative and the District III Program Administrator. The conflict involves Program Administrators day-to-day administrative authority and the District III Representatives interpretation of Band Statute Title 8 Section 8(6) that gives the representative the authority of "use" of the community center.

Since this request seeks an interpretation, at least in part, of Title 4 of Mille Lacs Band Statute, Section 25 of Title 4 requires the Solicitor General to give her written opinion on the issue.

Question Presented

What are the powers and duties of the Executive Branch and the District Representatives at the District Community Centers, and how are such powers and duties legally exercised pursuant to Band Statute?

Relevant Statute Provisions

2 MLBSA § 3. Division of Powers

To accomplish a fair and just exercise of authorities conferred by the people in the Constitution, the authorities of government shall be balanced by dividing such authorities so that no one person or governmental entity shall have absolute power.

3 MLBSA § 8(a)(6). Powers and duties of District Representatives

(a) The District Representatives shall have the following individual authority in the exercise of legislative power of Band government:

(6) To authorize the use of district community centers according to written standards that are fair and reasonable.

3 MLBSA § 8(b). Powers and duties of District Representatives

(b) No popularly-elected District Representative to the Band Assembly shall exercise any of the authority properly belonging to either the Executive or Judicial branches of government or to any officer who is appointed to serve the Non-Removable Mille Lacs Bands of Chippewa Indians.

4 MLBSA § 6 (f). Powers and duties of Chief Executive

The Chief Executive shall have the following authority in exercising the executive powers of Band government:

(f) To act as the custodian of all Band property.

4 MLBSA § 7(d), (g)(k). Powers and duties of executive officers.

The executive officers shall have the following general authority in exercising subject matter authority conferred by Band statute:

- (c) To regulate the performance of their duties by all persons employed within their area of subject matter jurisdiction.
- (g) To prescribe procedures for the development of policy in the area under their respective jurisdiction.
- (k) To perform any duties as may be assigned by the Chief Executive.

4 MLBSA § 10. Powers and duties of the Commissioner of Administration

The Commissioner of Administration shall act as the Chief of Staff within the Executive Branch of Tribal Government. The Commissioner of Administration shall have the following authority:

- (b) To act by and with the advice and consent of the Chief Executive.
- (f) To exercise all authority conferred pursuant to the provisions of any Band statute and any authority conferred by the Chief Executive.

Duties of Solicitor General - Solicitor's Opinions

Pursuant to 4 MLBSA § 18(d)(1), the Solicitor General has the duty "to interpret all laws and executive, legislative, secretarial and commissioner's orders and policies on behalf of the Non-Removable Mille Lacs Bands of Chippewa Indians." In performing this duty, 4 MLBSA § 19 imposes the following legal standard:

- a) The Solicitor General shall have the duty of advocating whatever position he [she] concludes is required by Band Statute in the event of any conflicts within the Executive and or between the Executive and Legislative branches of Band government.

Section 26 of Title 4, and Section 30 of Title 3 (the Title containing provisions discussing legislative authority), also require the Solicitor General to liberally construe the provisions of both Titles "so as to provide for the full force and effect of the purposes therein stated."

Principles of Statutory Interpretation

The principles of statutory interpretation applicable to the courts of the Mille Lacs Band were most clearly delineated by the Court of Appeals of the Court of Central Jurisdiction in a 1993 case, The Interpretation of the Solicitor General 15-0SG-92, 92-CV-5359. In that case, the Court firmly adopted the "Plain Meaning Rule" of statutory construction, meaning that "the particular language of the text is always the starting point on any question concerning the application of that law." Not only is the plain language the "starting point" for any analysis, the Court held that the plain meaning should also be considered *conclusive*, "except in the rare cases in which the literal application of the statute will produce a result demonstrably at odds with the intentions of the drafters" (citing Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)).

Consistent with the Plain Meaning Rule, the Court of Appeals identified the following inquiry for determining statutory meaning: "the meaning of a statute must, in the first instance, be sought in the language in which the legislation is framed," (citing Caminetti v. United States, 242 U.S. 470, 485 (1917)), and the Court identifies the starting point for this inquiry as "the language itself" (citing Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975)).

Most relevant for the question presented by the Executive branch in this inquiry, the Court of Appeals also identifies the process necessary to explain the interplay between various provisions of Band statute:

If one questions the application of the plain meaning rule to a provision of Band statute, he/she must show either that some other section of Band statute *expands or restricts* [italics added] its meaning, *i.e.*, that the provision itself is repugnant to the general purview of the Band statute, or that the Band statute considered in pari materia with other Band statutes, or with the legislative history of the subject matter, imports a different meaning (citing Jankowski v. International Board of Teamsters Local 710 Pension Fund, 673 F.2d 931 (7th Cir. 1982) and State v. Goldschmidt, 494 F. Supp. 93 (D. Me. 1980)).

Finally, consistent with this process the Court warns that it will "not give it [a word] a different meaning," unless "it is obvious to us from the Band statute itself that the Band Assembly intended what it used in a sense different from its common ordinary meaning." In drafting this opinion, the Solicitor General is limited by the parameters of the Plain Meaning Rule identified by the Court of Appeals, and by those provisions of Band statute that clearly define the Solicitor's duties under the law.



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

May 14, 2002

Mary Al Balber
Solicitor General
Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, MN 56359

Dear Ms. Balber:

On Tuesday, May 14, 2002, Pursuant to 3MLBSA §17 Band Assembly had a Special Meeting held in Hinckley, Minnesota regarding Solicitor's Opinion 25-02. A motion was made, and seconded, and approved by the Band Assembly to annul Solicitor's Opinion's 25-02.

If you have any questions feel free to contact me.

Sincerely,

Herb Weyaus, smv

Herb Weyaus
Speaker of the Assembly

HW/smv

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THE MILLE LACS BAND OF
OJIBWE INDIANS

Office of the Solicitor General

04/18/02

TO: Melanie Benjamin, Chief Executive

FROM: Office of the Solicitor General *MAB*

RE: Question of Executive Authority to Enjoin Election

On April 17, 2002, you received a request from a District II Band Member to enjoin or postpone the upcoming election for District II Representative. Based on this request, you asked our Office to determine whether such an action was within the scope of your statutory authority as Chief Executive.

The MCT Constitution is the primary source for election authority on the six MCT reservations, including Mille Lacs. Section 1 of Article IV requires that all elections on the MCT reservations be held in accordance with a uniform election ordinance adopted by the Tribal Executive Committee (TEC). The current Election Ordinance is #8, duly ratified by the TEC on March 6, 2001.

Chapter 1, Section 2 of Election Ordinance contains the schedule for all MCT Regular and Special Elections. It mandates the second Tuesday in June of even numbered years as date for RTC Regular Elections. Using this date, and the other dates mandated by the Ordinance, the TEC issues a specific election timeline every two years for the upcoming election. The Ordinance also mandates timelines when Special Elections are required.

The issue presented by the Band member in question is one of pre-election certification of candidates. Chapter 1, Section 3(A) of the Election Ordinance discusses the eligibility requirements for certification. Section 3 (C) discusses the issues pertaining to filing a notice of candidacy, including the requirement that the RTCs (Joint Assembly) certify candidates in accordance with the MCT Constitution, the MCT Election Ordinance, and the Dates and Guidelines set by the TEC for the election. Section 3 (C) also contains the following proviso:

Certification decisions are within the *exclusive jurisdiction* of the Reservation Tribal Council [at Mille Lacs the Joint Session], and are final and unappealable to the TEC.

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Chapter 3 of the MCT Election Ordinance contains all of the rules for Protests, Contests and Appeals, but a thorough review reveals that this Chapter refers only to *post-election* challenges. No other section of the Ordinance discusses certification challenges.

Mille Lacs Band Statutes contain only a few references to the election process. Most important for the question at hand, 3 MLBSA § 26 contains the following requirements for the Joint Session and the Chief Executive:

The Joint Session of the Band Assembly shall have the power to call an election at any time; however elections established under Article IV, Section 1 of the Constitution and By-Laws of the Minnesota Chippewa Tribe shall be held when directed by the two-thirds majority vote of the Tribal Executive Committee of the Minnesota Chippewa Tribe. Upon the official action of the Joint Session of the Band Assembly or the Tribal Executive Committee, the Chief Executive shall cause to have prepared and distributed an official Writ of Election.

No other provision of Band Statute grants either the Executive Branch or the Legislative Branch of Band government additional authority over the election process. 5 MLBSA § 111 is the only other provision of Band Statute that discusses election disputes (other than for school board elections, not at issue in this memorandum). It reads in full:

The Court of Appeals shall have original jurisdiction over election disputes pursuant to the Minnesota Chippewa Tribal Election Ordinance and on issues certified to the Court of Appeals from foreign jurisdictions.

Whether this provision grants the Court of Appeals the authority to hear pre-election certification disputes is clearly a decision for the Judicial Branch of Band government to render.

A thorough analysis of the MCT Constitution, MCT Election Ordinance and Band Statutes reveals no provision which grants your Office the authority to enjoin or postpone an election held in accordance with the Uniform Election Ordinance and its TEC-approved timetable.

Please do not hesitate to contact the Office of the Solicitor General if you have any further questions or concerns.