



MILLE LACS BAND OF CHIPPEWA INDIANS
Judicial Branch of Tribal Government

Opinion of the Solicitor General

07-056-83

TO: Arthur Gahbow, Chief Executive
FROM: Jay Kanassatega, Solicitor General
SUBJECT: Band Statute 1000-MLC-4, Nay-Ah-Shing Gaming Commission

You have requested a further opinion and clarification with regards to the Opinion Number 06 of the Solicitor General in a letter dated August 10, 1983. Additionally you have raised questions which need responses related to the Gaming Commission's status in a separation of powers form of governance, as well as jurisdictional issues which arise therewith. This new opinion is prepared to satisfy the present enquiry, however it is not intended to supercede the previous opinion.

Question No. 1: Who has the responsibility to nominate and confirm three members to the Nay-Ah-Shing Gaming Commission?

Response - Band Statute 1000-MLC-4 was enacted on November 10, 1981 previous to the governmental transition to separation of powers. Although the technical wording is not consistent with the new form of government, the intention of the Band Assembly was not to operate some statutes under the new form of government while others under the past form of government. Thus the Band when confronted with these inconsistencies has chosen to adopt the positions more closely aligned with the new and not the old form of government. Therefore, consistent with the separation of powers, all appointments rest with the prerogative of the Chief Executive. Confirmation of any appointee rests with the Band Assembly who has the prerogative to accept or reject. Problems of technical inconsistencies in all statutes will be resolved during revisions of the statutes which will occur at the closing of the present Legislative session in September, 1983.

Question No. 2: Regarding the credibility of any nominee to the Commission?

Response - It is the joint duty of the Chief Executive and the Band Assembly to nominate and confirm reputable, respectable and credible persons to serve within the government and on independent commissions. This responsibility initially rests with the Chief Executive because he has been legally charged to exercise this authority. Should he question

these personal characteristics, it is the legal duty of the Band Assembly to exercise its option and reject the appointment. Rather than this question assuming a legal foundation, it more properly is a personal, ethical question of the elected leadership combined.

Question No. 3: What direction an appointee will pursue after confirmation and who will oversee that any appointee will not act in a manner which negatively impacts the Band.

Response - Before the nomination of any individual to any appointive position, it is the duty and obligation of the Chief Executive to interview any prospective nominee. It is also the legal duty and obligation of the Band Assembly to interview any prospective nominee. Any such interview should be utilized to project what a nominee thinks about the position and what he would do if confirmed. Of course, this has no foundation in Band Statute and is therefore optional to both branches of government with the exception of the legal duties and obligations.

With an appointee to an independent commission such as the Gaming Commission, the Commission is bound by Band Statute 1000-MLC-4. Should the Commission act in a manner which is inconsistent with its legal authority, it is the responsibility of the Solicitor General to seek impeachment in the Band Assembly of any Commission member{s} who would breach his oath of office by violating Band law. As regards an oversight duty, this activity falls within the exterior perimeter of the authority of the Chief Executive. Although the Commission is independent, they should always be mindful of the policy initiatives of the Chief Executive. This point is consistent with new amendments regarding Executive privilege and the scope of power of the Chief Executive.

Question No. 4: Regarding slot machine operations under the jurisdiction of the Band.

Response - This type of mechanical gaming device is illegal under Band Statute 1000-MLC-4. It is the legal duty of the Solicitor General to institute legal proceedings in the Court of Central Jurisdiction upon notification by law enforcement officers, the Chief Executive or any person who has knowledge of such illegal activity. Additional protections are afforded in that the Commission does not possess financial authority independent of the central government. This authority has been retained by the Band Assembly since no clear delegation exists in law.

Question No. 5: Who is the Gaming commission responsible to? or who do they answer to?

Response - All three branches of tribal government have responsibility. The Executive branch with regard to policy, the Legislative with regard to appropriation and new laws and the Judicial with regard to law enforcement. Depending upon the circumstances, any one or a combination of two or more could act in the interest of the Band as an entity. This type of responsibility will more likely make the Commission the most closely monitored institution of this government.

Question No. 6: Is each organization operating gaming events in District I and II in legal compliance regarding licensure.

Response - Without formal licensure by the Band Assembly each organization continues to operate without legal authority. Since the term of office of the previous Commission members expired on November 10, 1982, the Gaming Commission's recent licensure of said organizations is without legal status. Legality however can be achieved through the ratification of said licensure by the Band Assembly in compliance with Section 1.04 of the statute.

Question No. 7: With regard to accounting for gross receipts and revenues of organizations via the Gaming Commission and other issues of Section 5.01 of Band Statute 1000-MLC-4.

Response - The legal difficulty with this Section is the lack of separation between the Gaming Commission and the District I bingo committee. Members of the Gaming Commission are employed with the District I bingo events. Members of the District I bingo committee are employees of the District I bingo events. The individuals who are in positions to regulate bingo events are the same individuals who establish and authorize organizations who can conduct such events. This is a conflict of interest which tends to monopolize gaming activities.

This basic conflict of interest is not what the Band Assembly intended in enacting this statute. The Gaming Commission must stand separate, in an overseer role, over all licensed gaming organizations. Members of the Commission can not serve on organized gaming committees nor, can any commission member apply for a license or be involved with any group who seeks licensure. Similarly, members of the Band Assembly, as well as, the Chief Executive, Chief Justice, and members of the Judicial branch of tribal government, including the Court of Central Jurisdiction should not become involved in any capacity with a group organized to conduct gaming activities or any gaming event where because of their official position with the government, people will subject themselves voluntarily to the office which is held. It is extremely necessary that official positions of the government remain exterior to the inner-workings of the Commission and any group licensed by the Commission. This position becomes mandatory if the credibility of the tribal government is threatened in any manner. Here, the government, as a whole, needs to be in a position to suspend or terminate gaming activities.

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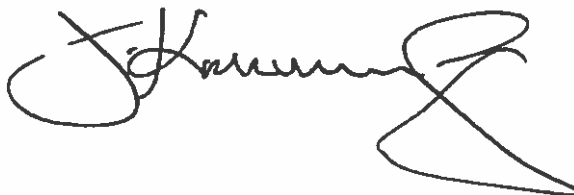
Additionally, the revenues of the Gaming Commission are held in common with the District I bingo committee. Expenditures from this account are also held in common between the Commission and the Committee. Although the Senior Accountant for the Office of Management and Budget does not keep the general books of account for the Commission, she does account for revenues of the gaming event and the gross receipts and profits of the Commission as a whole by her involvement in the counting and deposition process after each weeks event. Here, the Secretary of Treasury has direct involvement which is inconsistent with this section of the statute. His role should be more of a monitoring and review function rather than direct employment because of his Constitutional and Statutory authority over the financial affairs of the Band. In summary, the legal problems which evolve from Section 5.01 are basic with a separation of powers form of government. Government officials need to remain in a position to exercise their legal statutory duty without compromising their positions by direct involvement especially when matters of non-compliance arise.

Should you require additional information, please do not hesitate to contact me.

THE SOLICITOR GENERAL

DATED:

August 16, 1983

A handwritten signature in black ink, appearing to read 'J. Hanning', written in a cursive style.