

MILLE LACS BAND OF CHIPPEWA INDIANS
Executive Branch of Tribal Government

OPINION OF THE SOLICITOR GENERAL

This Opinion is issued pursuant to 1142-MLC-3 § 16.04 and in response to a Memo from Chief Justice Natalie Weyaus. (See Attached)

As a starting point the Court of Central Jurisdiction has all the judicial authority of the Mille Lacs Band except as otherwise limited by law. This is expressed in the new Judicial Statute § 8 captioned **Judicial Authority**. Additionally this statute will be interpreted using first the Plain Meaning Standard and with the Intent of Band Assembly in mind.

The answer to your question of who is on the Court of Appeals is that the judges and justices holding office pursuant to 1143-MLC-4 remain on the Court of Appeals until August of 1996 pursuant to § 12.06 of the new statute. **One of the reasons for passage of the new Judicial Statute was to decrease the number of judges and justices.** To add three new justices to the existing five would not help in accomplishing this goal. However, this does not mean that there couldn't be additional appointments in the event of vacancies on the court.

The cases currently going to court should be heard by the District Court Judge. Realizing we do not currently have a District Court Judge to hear cases we have several options in the interim. **First of all court operations must proceed. The courts refusal to hear cases until a District Court Judge is selected must not continue.** There are many cases that need resolution and this is affecting the general welfare of the Mille Lacs Band and its people.

The new statute grants very broad authority to the court and having a Special Magistrate preside in cases is a simple solution in the interim until a judge is selected. The authority for a Special Magistrate to hear a case can be found in § 8.06. Additionally, one of the required duties of the Chief Justice is to determine whether a Special Magistrate might be needed, pursuant to § 16.06. Additionally Special Magistrates acting as justices and judges pursuant to § 8.06 will have § 20 judicial immunity from suit in the performance of their duties to the same extent as other justices and judges of the court.

In regards to existing justices presiding over District Court cases, though it is not preferred it can be done, especially with the consequences of not hearing cases so potentially hazardous. A crisis situation has arisen and the potential for a tragedy is a reality. The court has broad judicial authority as stated above. In

fact all of the inherent judicial authority of the sovereign except as limited by law. More specifically § 8.06 refers to a "law trained" Special Magistrate. The existing justices fall into this category. They are law trained in that they all have attended several training seminars and have ample experience to fit a "law trained" standard.

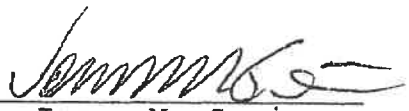
Having justices hear trial level cases until a District Court Judge is selected is within the Court of Central Jurisdiction's authority. This authority can be administered by the Chief Justice pursuant to the broad authority expressed in § 16.07 or by the court itself pursuant to § 8 and § 8.06. The judicial authority of the court is there unless expressly limited by law. Here there is not a limitation. This is a crisis situation and the court must continue.

In answer to the question of what happens to old court orders they are still in place unless otherwise restricted. Which some are. Obviously the court order presuming an individual is guilty contradicts 1140-MLC-1 § 11 called Presumption of Innocence. A broad statement as to which orders are valid is beyond the scope of this opinion and needs to be handled on an order by order basis. However they are presumptively valid. The court should however report the procedural orders it has adopted to Band Assembly and update existing rules pursuant to § 8.01 et seq.

In regards to your last question of cases having been heard where a judgment or order has not been signed it is appropriate for the presiding judge at the hearing if they have made findings and determinations. The judge need to sign the orders for the cases they heard. This will clear up their dockets and is more an administrative issue. The cases do not need to be reheard.

Dated this 30th day of May, 1995.

OFFICIAL SEAL OF THE
MILLE LACS BAND.


James M. Genia
Solicitor General

June 13 , 1995

To: Jim Genia
Solicitor General

From: Dorothy Sam
Chief Justice

Re: Notification of Legality Review of the Opinion of the
Solicitor General

On June 13, 1995 the Full Court of the Court of Central Jurisdiction, upon majority vote, decided to consider the legality of the Opinion of the Solicitor General. Therefore, pursuant to Court Order # 006 rule # 5, a written response by the Solicitor General shall be filed with the Court within five working days. A hearing on the matter will be scheduled 15 days after the receipt of said written response. The title of the matter shall be called "In the matter of the Legality Review of the Opinion of the Solicitor General issued on May 30, 1995." The issues the Solicitor General shall address are as follows:

1. Doesn't the Plain Meaning rule foreclose analysis of legislative intent when the meaning is conclusive?
2. Shouldn't the appointed Justices be included in the current Court of Appeals?
3. Appointment of a Special Magistrate to hear District Court Cases.
 - A. Would a Special Magistrate have Judicial Immunity even though immunity under Section 20 of the new Judicial Code is given only to Justices and Judges?
 - B. Can a Special Magistrate be appointed to hear a District Court case for reasons besides those set out in section 8.06 of the new Judicial Code?
4. Appointment of Justices and Judges, holding office pursuant to Band Statute 1143-MLC-4, to hear District Court Cases.
 - A. Can one of the Judges or Justices be appointed as a Special Magistrate even though Section 16.06 of the new Judicial Code requires that the Special Magistrate be a law school graduate?
 - B. Where does the Chief Justice get the authority to appoint said Judge or Justice to hear a District Court case?

5. Does a Court Order, enacted pursuant to Band Statute 1143-MLC-4 Title I Section 4.02, still have the force of law or must it be resubmitted pursuant to Section 8.02 of the new Judicial Code?
6. Can a Judge or Justice, holding office pursuant Band Statute 1143-MLC-4, sign a District Court Order even though all their authority to do so was repealed by Section 2 of the new Judicial Code?

Because of the importance of the following questions to the operation of the Court and because an answer was previously requested by the Court, the Court requests that the Solicitor General also answer the following questions:

7. Since the Court's rules of practice and procedure (civil and criminal) were repealed and not replaced by the New Judicial Code, what rules of practice and procedure should the Court follow?
 - A. What time table should the Court follow in civil and criminal cases?
 - B. What should the Court charge for Court fees?
 - C. What should be contained in a Complaint (Civil and Criminal)?

Sincerely Yours,

Dorothy Sam
Dorothy Sam
Chief Justice
Court of Central Jurisdiction



MILLE LACS BAND OF CHIPPEWA INDIANS
Executive Branch of Tribal Government

TO: Chief Justice Dorothy Sam and Associate Justices Natalie Weyaus, Bonita Nayquonabe, Ruth Sam, and Rosalie Noonday

FROM: Dave Christensen
Deputy Solicitor General

DATE: June 21, 1995

RE: Review of the Solicitor's Opinion.

On June 14, 1995 the Solicitor James Genia received a memo from the Chief Justice advising him that the Solicitor's Opinion (No. 95-01) issued May 30, 1995 was being reviewed by the Court of Central Jurisdiction pursuant to Court Order 006 Rule 5. This document is intended to serve as the written response of the Solicitor.

BACKGROUND

The Solicitor's Opinion was issued at the demand of acting Chief Justice Natalie Weyaus through the Speaker of Band Assembly David Matrious. Justice Weyaus expressed her concerns regarding 1303-MLC-4 and the impact of that statute on judges holding office pursuant to the old statute 1143-MLC-4 and the procedures of the court. Prior to this the court had refused to hear cases and a crisis or tragedy was looming.

Initially a memo was sent from the Office of the Solicitor General to Justice Weyaus answering her questions about court procedures and who would preside over cases until a District Court Judge is appointed. Justice Weyaus indicated that the memo was insufficient so a Solicitor's Opinion was written. The Opinion apparently did not satisfy Justice Weyaus either so she wrote a letter to the Chief Executive requesting an agreement be entered into whereby the Special Magistrates would be cloaked with judicial immunity. That request was viewed as unnecessary and refused.

JURISDICTION

The first issue, as it is in any case before a court, is the question of the jurisdiction of the court. Chief Justice Dorothy Sam in her memo indicates that the "Full Court of Central Jurisdiction" is reviewing the legality of the Solicitor's Opinion pursuant to Court Order 006 Rule 5.

Obviously the Court of Appeals has jurisdiction to review a decision made by the District Court. 1303-MLC-4 §§ 8.03, 8.08

However the Original Jurisdiction of the Court of Appeals extends to election issues and issues certified to the court from foreign jurisdictions. 1303-MLC-4 § 11. In all other cases the District Court has Original Jurisdiction. 1303-MLC-4 § 10 says:

The District Court of the Court of Central Jurisdiction shall have original jurisdiction over all criminal and civil matters except as otherwise provided for by law.

In the matter at hand there has not been a District Court decision or even a defense raised in a case that challenges a judges' authority to hear a case. To the knowledge of the Office of the Solicitor General there is not a plaintiff or a defendant in a case before the District Court challenging the authority of a judge to render a decision. Accordingly the Court of Appeals lacks original jurisdiction to review this issue until a decision is made in the District Court. Then an appeal may be heard.

A second and more important point is the notion embodied in Court Order 006. The thought that the Court of Appeals would issue an advisory opinion on an issue not brought before it. The notion of the Court issuing advisory opinions is contrary to Band statute. 1303-MLC-4 § 8, captioned **Judicial Authority** expressly states:

Except as otherwise provided for by law the Court of Central Jurisdiction shall have all judicial authority extending to **cases in law and equity.** (My Emphasis)

This means the court only hears real cases. The court does not issue advisory opinions in cases that do not exist and may never exist. If the Court of Appeals rules on the validity of the Solicitor's Opinion without a case before it the decision will only be advisory. Further it would not even be a binding decision and would have no precedential value. Court Order 006 Rule No. 4 says:

The Court of Central Jurisdiction's review of any opinion shall not preclude formal civil litigation by a third party at any future time.

This means that the same issue can be litigated for a second time. Litigation would not be barred by the first decision. This is like double jeopardy in a criminal case except that in a civil matter when an issue is precluded by prior litigation it is called collateral estoppel (claim preclusion is called res judicata). This means the opinion by the court is advisory only and is a waste of the courts time and the Solicitor's time. It also violates fundamental principles of a separation of powers form of government.

In a separation of powers form of government each of the three branches has a separate function to perform. Court Order 006 basically usurps power vested in the Executive Branch and the Legislative Branch. They are the law makers and policy makers. The courts job is to uphold and interpret the law and act as a dispute

resolver. Band Assembly also has the expressed power to annul a Solicitors Opinion 1142-MLC-2 § 19. Band Assembly may also enact new law voiding an Opinion. 1142-MLC-2 § 32. This is a check the legislative branch can perform on the executive branch which the Office of the Solicitor General is a part of.

The Court of Central Jurisdiction may also overturn a Solicitor General's decision. This however is not to be done in a policy decision such as an advisory opinion but rather as the court acting as a tribunal rendering a decision in a bona fide case or controversy. Accordingly Court Order 006 is in conflict with Band statute and should be amended and submitted to Band Assembly pursuant to 1303-MLC-4 § 8.02 and this proceeding must be dismissed.

The final issue regarding original jurisdiction over this proceeding is the procedures set forth in Court Order 006 Rule No. 2 which says:

The Court of Central Jurisdiction shall review all opinions of the Solicitor General during the session of the Court in which said opinion was rendered. Should the Court fail to review any opinion, it shall have the authority to postpone and transfer action until the next session of Court. No further postponement or transfers can occur without civil litigation being commenced.

The Solicitor's Opinion was issued May 30, 1995. There was no action taken by the court during that session of the court which ended June 5, 1995. 1303-MLC-4 § 16.01 (This was also the same dates for the session under the old statute. 1143-MLC-4 Title I § 24.02) The court by the terms of Court Order 006 Rule No. 2 could have taken action and transferred the case to the next session or postponed it but it did not do so. Therefore litigation must be commenced for the Court to review a Solicitor's Opinion by statute and by court order. The review of the Solicitor's Opinion is improperly before the court and it must be dismissed.

SPECIFIC ISSUES

PROCEDURE

In terms of what law to apply in civil cases, including procedure in the absence of Band law, we look to federal law then state law so long as it does not conflict with cultural law. 1303-MLC-4 § 27. This will be the case until the Band develops its own rules of procedure.

Setting Court fees is an administrative function of the court and the court has been entrusted with that task I am confident the court will use good judgment in fixing court fees. This is not a procedural issue that has to be reported to Band Assembly it is administrative. The only fee established in Band statute is found in 1303-MLC-4 § 38 for appeals.

There is a significant body of law already in existence. In terms of criminal complaints and criminal procedure 1164-MLC-6 Title VI is very helpful. Complaints are covered in § 62, § 63, § 64. Specific times are mentioned for arraignments § 75 and bail § 77 and summons in lieu of arrest § 69. Any thing else that is needed should be set by the court and reported to Band Assembly. Also the presiding judge has a great deal of flexibility in setting time tables for cases. The time table for cases under 1143-MLC-4 Title III § 4 was rather rigid, unworkable and did not make much sense beyond policy considerations for judges. This was another reason for passage of 1303-MLC-4.

SPECIAL MAGISTRATES

The next issue addressed is that of Special Magistrates. Special Magistrates are judges or justices presiding over cases with all the authority of a judge. 1303-MLC-4 § 8.06 A Special Magistrate is simply a judge contracted to hear a case. Therefore their actions as a judge will be covered by § 20 immunity. It is part of their authority.

In terms of when a Special Magistrate can preside over a case the provisions in 1303-MLC-4 § 8.06 are very broad. The idea behind this section is to keep the court functioning and to keep proceedings fair. This is recognition that sometimes a Special Magistrate may be enlisted as the interests of justice require.

A Special Magistrate who is on the Court of Appeals may preside over a District Court case. Section 16.06, under Duties of the Chief Justice may enlist a law school graduate to preside over a case. However the Court has the authority under Section 8.06 to enlist a Special Magistrate who is law trained. In the situation at hand the justices on the Court of Appeals are all law trained. They have trial experience and training. The authority is there to have them preside in the interim until a District Court judge assumes office. The interests of justice require it. 1303-MLC-4 § 8.06

The same analysis holds true for signing District Court Orders. Again it is simple to have the person who heard the case sign the order for the case as a Special Magistrate.

Also the history of the federal judicial system is that Supreme Court judges used to ride circuit. There were no federal district courts. This is where the term "Circuit Court of Appeals" originated. A justice had a circuit they rode and presided over cases in. Then the Supreme Court reviewed those decisions. This was not a problem.

COURT ORDERS

Court orders passed pursuant to 1143-MLC-4 are presumptively valid but some obviously are not good law anymore. However, all the orders or at least those the court wishes to make current should all be reported to Band Assembly for their review pursuant to 1303-

MLC-4 § 8.02.

A good example is that of Court Order 006 which was passed pursuant to 1024-MLC-3 back in 1983. It is a little obsolete in a separation of powers form of government.

COURT OF APPEALS

Any justices appointed will be included in the Court of Appeals. There is no requirement in 1303-MLC-4 that there be an appointment until August 15, 1996 when all of the current judicial positions end. However, if a vacancy occurs on the court it may be filled by nomination. This is consistent with one of the reasons for passage of 1303-MLC-4 which is to reduce the number of justices.

PLAIN MEANING RULE

The "plain meaning rule" will not foreclose an analysis of legislative intent. The "plain meaning rule" is a tool used for determining legislative intent. The intent of the legislature is what the court is attempting to ascertain when it uses the "plain meaning rule" or any other rule of statutory construction. The language in a statute is simply a good indication of what the intent of the legislature is. But it is not the only indicator and a thorough examination of the statute and surrounding circumstances is often required to reach a thorough and just end.

Additional evidence is allowed to be presented in determining legislative intent in federal statutory and treaty construction. It makes good sense. For example the landowners in the treaty case have attempted to use the "plain meaning rule" to stop the Mille Lacs Band from showing the context of the treaties, executive orders and statutes surrounding the treaty rights. Taken out of context, as the state, county and landowners have attempted to place the words, the language of various documents could be very damaging to the Mille Lacs Band in the case. The intent of those same documents is very helpful. It is the intent behind the documents that must be ascertained not the words used.

I hope this aids the court in making your determination. Thank you.

Sincerely Yours,

Dave Christensen

Dave Christensen
Deputy Solicitor General

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

IN THE COURT OF CENTRAL JURISDICTION
COURT OF APPEALS

IN THE MATTER OF THE LEGALITY REVIEW OF THE OPINION OF THE
SOLICITOR GENERAL. OPINION ISSUED ON MAY 30, 1995.

Case # 95-CV-0278

The Court, pursuant to Band Statute 1142-MLC-3 Section 23
(Interpretation of Statute), has the right to review the written
opinion of the Solicitor General even if it is determined that
Court Order #006 is not a valid law anymore. The interpretation of
how some of the language in Band Statute 1303-MLC-4 is to be
applied to the operation of the Court is in question and is now
properly before the Court, pursuant to Band Statute 1142-MLC-3
Section 23. You are hereby put on notice that a hearing on the
above entitled matter will be held on July 12th at 2:00pm at the
Justice Center.

Notice signed this 30 day of June, 1995.

SEAL OF COURT

Dorothy Sam
Dorothy Sam
Chief Justice
Court of Central Jurisdiction

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

IN THE COURT OF CENTRAL JURISDICTION
COURT OF APPEALS

Case No. 95-CV-0278

IN THE MATTER OF THE LEGALITY REVIEW OF THE OPINION OF THE
SOLICITOR GENERAL. OPINION No. 95-01

FACTS

The Band Assembly, on April 19, 1995, enacted a judicial code that replaced Band Statute 1143-MLC-4. Upon passage of this bill questions arose regarding court operations. The Chief Justice, on May 18, 1995, wrote to the Chief Executive requesting her to invoke her power under Band Statute 1142-MLC-3 § 23 to request a legal Opinion from the Solicitor General. The Solicitor General issued an Opinion of the Solicitor General (the "Opinion") dated May 30, 1995. This Court on June 13, 1995, in accordance with Band Statute 1142-MLC-3 § .23, decided to review the Opinion and presented certain questions for response. On June 21, 1995 the Solicitor General responded, raising a question about this Court's subject matter jurisdiction to review the Opinion. On July 12, 1995 a hearing was held on the issue of subject matter jurisdiction. At that July 12th hearing this Court agreed to decide the issue of subject matter jurisdiction before considering other issues raised in the opinion.

The Solicitor General has put forth five arguments as to why this court does not have subject matter jurisdiction to hear this case. Subject Matter Jurisdiction is defined as the power of a court to deal with the general subject matter involved in the

action. Noxon Chemical Products Co. v. Leckie, 39 F.2d 318, 320 (3rd Cir. 1930) Cert. den. 282 U.S. 841 (1930).

The Solicitor General's first argument is that this Court lacks original jurisdiction to review an Opinion because this matter does not involve an election dispute or a certified question from a foreign jurisdiction. See Band Statute 1303-MLC-4 § 11. Band Statute 1303-MLC-4 § 11 states:

Original Jurisdiction of the Court of Appeals. 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.

Second, that this Court does have the power to overturn an Opinion, but only within the context of a case in law and equity. The Deputy Solicitor General relies on Band Statute 1303-MLC-4 § 8 for this proposition. Band Statute 1303-MLC-4 § 8 states:

Judicial Authority. Except as otherwise provided for by law the Court of Central Jurisdiction shall have all the judicial authority extending to cases in law and equity. The Court of Central Jurisdiction shall have all powers necessary for carrying into execution its judgments and determinations in order to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

The Deputy Solicitor General argues that since the present case is not a case in law and equity this Court does not have subject matter jurisdiction.

Third, that if there is no case in law and equity before the Court any opinion issued by the Court will only be an advisory opinion and this Court has no authority to issue advisory opinions.

The Solicitor General relies on Rule No. 4 of Court Order No.

6 as support for the argument that this Court cannot issue an advisory opinion. He states that Rule No. 4 would be in conflict with the doctrine of collateral estoppel. The doctrine of collateral estoppel states that once an issue has been determined by a valid and final judgment that issue cannot be litigated again between the same parties in a future lawsuit. Ashe v. Swenson, 397 U.S. 436, 443 (1970). Rule No. 4 of Court Order No. 6 states:

The Court of Central Jurisdiction's review of any opinion shall not preclude formal civil litigation by a third party at any further time.

The court has a difficult time following how the doctrine of collateral estoppel applies to the argument that the Court cannot issue advisory opinions. Nevertheless, the just of the argument is that it would be a waste of judicial resources.

Fourth, that Court Order No. 6 is invalid because it usurps power vested in the executive and legislative branches of the government.

Lastly, that Rule No. 2 of Court Order 006 bars this Court from hearing this case. Rule No. 2 of Court Order No. 006 states:

The Court of Central Jurisdiction shall review all opinions of the Solicitor General during the session of the Court in which said opinion was rendered. Should the Court fail to review any opinion, it shall have the authority to postpone and transfer action until the next session of Court. No further postponement or transfers can occur without civil litigation being commenced.

The Solicitor General argues that because the Opinion was issued in the spring of 1995 session and no formal action was taken to transfer the review to the next session the Court is Barred from hearing the case.

ANALYSIS

I. LACK OF JURISDICTION

Band Statute 1303-MLC-4 § 11 does not bar this Court from reviewing Opinions. Section 11 does not encompass all instances when this Court has original jurisdiction. The Court's original jurisdiction over reviewing Opinions is codified throughout other Band statutes. See Band Statute 1142-MLC-3 § 23, See also Band State 1141-MLC-2 § 32, See also, 1092-MLC-25 (Charter) Article VIII §14, See also, Band Statute 1040-MLC-18 § 13.01. Band Statute 1142-MLC-3 § 23, confers jurisdiction to review Opinions in the present case. Band Statute 1142-MLC-3 § 23 states:

Interpretation of Statute. Should there be any doubt as to the proper interpretation of any part of this Band statute, the Chief Executive may submit such question to the Solicitor General who shall give his/her written opinion thereon, and any such opinion **shall be binding unless annulled, in whole or part, by the Court of Central Jurisdiction** or amended by the Band Assembly pursuant to enactment of law. (Emphasis Added)

Another statute that confers similar jurisdiction is Band Statute 1141-MLC-2 § 32 which states:

Interpretation of Statute. Should there be any doubt as to the proper interpretation of any part of this Band statute, the Speaker of the Assembly or the Band Assembly as an entity may submit such question to the Solicitor General who shall give his or her written Opinion thereon, and such Opinion shall be binding **unless annulled in whole or in part, by the Court of Central Jurisdiction**, or amended by the Band Assembly pursuant to the enactment of the law. The Exterior Legal Counsel of the Band shall, on request, assist the Solicitor General in the proper interpretation to this or any other Band Statute upon official request of the Band Assembly. (Emphasis Added)

This authority is also found in the Great Lakes Indian Fish & Wildlife Compact, Band Statute 1092-MLC-25 (CHARTER) Article VIII

§ 14 which states:

Obligations of the Solicitor General. Should there be any doubt as to the proper interpretation of any part of this Chapter, the Chief Executive, Speaker of the Assembly or the Commissioner of Natural Resources shall submit such question to the Solicitor General, who shall give his written opinion thereon and such opinion shall be binding until **annulled by the full Court of Central Jurisdiction** or amended by law. (Emphasis added)

The authority is also found in the Consolidated Nay-Ah-Shing School Board, Band Statute 1040-MLC-18 § 13.01 which states:

Should there be any doubt as to the proper interpretation of any part of this law, the Commissioner of Education shall submit such question to the Solicitor General, who shall give his written opinion thereon and such opinion shall be binding until **annulled by the Court of Central Jurisdiction** or amended by law. (Emphasis added)

The Court's authority to review Opinions has never arisen from a section of any Band Statute entitled "Original Jurisdiction of the Court of Appeals". In the most previous judicial code, Band Statute 1143-MLC-4 Title I § 23, it stated that:

Original Jurisdiction of the Court of Appeals. The Court of Appeals shall have original jurisdiction over election disputes pursuant to Minnesota Chippewa Tribal Election Ordinance, and questions regarding the constitutionality of any act of the Band Assembly or executive officer or any Band statute that is certified to it by the Chief Justice pursuant to established Court rules.

Even though, this section did not mention the Court's authority to review the Opinions, the authority was still codified in other sections throughout the Band's statutes.

In Band Statute 1024-MLC-3, the judicial code that was replaced by Band Statute 1143-MLC-4, there was no section entitled "Original Jurisdiction of the Court of Appeals". In Band Statute 1024-MLC-3 the Solicitor General (then called the Chief Legal Officer) was in

the Judicial branch of the government. Since, the Solicitor General's authority to issue opinions was vested in the Judicial Code, the Court's authority to review such opinions was also vested in the Judicial Code. Section 19.01 of Band Statute 1024-MLC-3 stated that:

The Chief Legal Officer shall be responsible for the interpretation of all laws and policies on behalf of the Mille Lacs Band of Chippewa Indians. Said interpretations of the Chief Legal Officer shall be binding until **annulled by the Court of Central Jurisdiction** or amended by the Band Assembly. (Emphasis added)

When the Solicitor General was moved from the Judiciary Branch to the Executive Branch, with the passage of Band Statute 1143-MLC-4, the Court's authority to review the Opinions went along with him. Therefore, there is no merit to the argument that Band Statute 1303-MLC-4 § 11 precludes this Court from reviewing Opinions.

II. THE COURT CAN ONLY HEAR CASES IN LAW AND EQUITY

The Court need not decide whether this case is a case in law and equity. Suffice it to say that the Court takes notice of the language in Section 8 of Band Statute 1303-MLC-4 § 8 that states, " Except as otherwise provide by law ...". The right of this Court to review the Opinion, in the present case, is **provided by law** in Band Statute 1142-MLC-3 § 23.

III. THE COURT CANNOT RENDER ADVISORY OPINIONS

An Advisory Opinion is defined as:

Advisory opinion. Such may be rendered by a court at the request of the government or an interested party indicating how the court would rule on a matter should adversary litigation develop. An advisory opinion is thus an interpretation of the law without binding effect.

BLACK'S LAW DICTIONARY 50 (5th ed. 1979). Band statute 1142-MLC-3

§ 23 states:

Interpretation of Statute. Should there be any doubt as to the proper interpretation of any part of this Band statute, the Chief Executive may submit such question to the Solicitor General who shall give his/her written opinion thereon, and any such opinion **shall be binding** unless annulled, in whole or part, by the Court of Central Jurisdiction or amended by the Band Assembly pursuant to enactment of law. (Emphasis added)

Since, an opinion issued by this Court pursuant to Band Statute 1142-MLC-3 § 23 will have binding effect on the parties, it cannot be considered an advisory opinion. The Solicitor General, pursuant to Band Statute 1142-MLC-3 § 23, made binding law by issuing his Opinion. The Court, pursuant to Band Statute 1142-MLC-3 § 23, has the authority to determine whether the Opinion is lawful. If the Opinion is found to be unlawful the Court has power to annul it in whole or part. Id. Binding law is made through this process. In the present case it defines how the Court will operate. Since, the review of an Opinion does not involve the issuance of an advisory opinion, the Solicitor General's argument that this Court cannot issue an advisory opinion has no bearing on this case.

IV. VIOLATES THE SEPARATION OF POWER FORM OF GOVERNMENT

The Solicitor General argues, but has not put forth any valid reason why the Court's review of the Opinion would usurp the power vested in the Executive Branch and the Legislative Branch. The judicial review of Opinions issued by the Solicitor General implicates an important checks and balances system in our Separation of Powers Government. An Opinion of the Solicitor General can be reviewed and annulled by the Court. The Band Assembly, in turn, may make law if it disagrees.

V. TIME TO REVIEW HAS PASSED

Court Order No. 006 is a procedural rule. It does not confer subject matter jurisdiction on this Court to review the Opinions. Subject matter jurisdiction is conferred by Band Statute 1142-MLC-3 § 23. Court Order No. 006 merely sets the procedure for such review. Therefore, this Court does not have to reach the merits of the Court Order No. 006 argument in determining if this Court has subject matter jurisdiction.

In accordance with the aforementioned findings this Court **HOLDS** that it does have subject matter jurisdiction to hear this case.

Therefore, the Solicitor General is hereby put on notice that a Hearing on the merits of this case will be held on Friday October 13, 1995 at 1:00 PM at the Justice Center.

IT IS SO ORDERED, ADJUDGED AND DECREED

Entered this 29th day of September 1995

SEAL OF COURT

<u>Dorothy Sam</u>	Dorothy Sam
<u>Natalie Weyaus</u>	Natalie Y. Weyaus
<u>Ruth Sam</u>	Ruth Sam
<u>Bonita Nayquonabe</u>	Bonita Nayquonabe
<u>Rosalie Noonday</u>	Rosalie Noonday

IN THE COURT OF CENTRAL JURISDICTION
COURT OF APPEALS

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

IN THE MATTER OF:

CASE NO. 95-CV-0278

The Legality Review of the Opinion
of the Solicitor General.

Opinion No. 95-01

Petition for Rehearing

PETITION FOR REHEARING

The Deputy Solicitor General on behalf of the Office of the Solicitor General for the Non-Removable Mille Lacs Band of Chippewa Indians pursuant to FED. R. APP. P. Rule 40 hereby petitions the court for rehearing the order and judgment entered in Case No. 95-CV-0278 on September 29, 1995. That order and judgment determining that the Court of Appeals had **subject matter jurisdiction** to review the legality of a Solicitor's Opinion.

The petition for rehearing should be granted because the Court of Appeals ruled that the Court of Appeals has subject matter jurisdiction. However the Solicitor General's Office did not raise a single issue of subject matter jurisdiction. In fact the Deputy Solicitor General in his brief and at hearing agreed that the Court of Appeals has subject matter jurisdiction to review a Solicitor's Opinion.

The issue raised by the Solicitor General is that of the **Original Jurisdiction** of the Court of Appeals. The original jurisdiction issue being whether or not the Court of Appeals may review a Solicitor's Opinion first (originally) before the District Court does. This is in large part a procedural issue that affects the fundamental structure of the Court of Central Jurisdiction. The judgment by the Court of Appeals does not address the issue of original jurisdiction. In fact the Court of Appeals in its opinion cites several Band Statutes 1142-MLC-3 § 23, 1141-MLC-2 § 32, 1092-MLC-25 § 14, and 1040-MLC-18 § 13.01 for having subject matter jurisdiction. However, not a single one of the statutes cited refers to cases originating in the Court of Appeals. In fact they refer generally to the Court of Central Jurisdiction, and not the court of Appeals. The Court of Central Jurisdiction consists of the District Court and the Court of Appeals. 1303-MLC-4 § 7.01

The District Court has original jurisdiction over all civil and criminal matters except election issues and issues certified to

the Court of Appeals from foreign jurisdictions. 1303-MLC-4 §§ 10-11.

Further, the Court's opinion seems to indicate that there is a "Full Court". This institutional body that existed in the old statute, 1143-MLC-4 simply does not exist any more in 1303-MLC-4. The one citation the Court's opinion refers to for "Full Court" is that of 1092-MLC-25 Article VIII § 14 for the Great Lakes Indian Fish and Wildlife Commission. I point out this particular section (14) refers to "**interpretations of the GLIFWC Chapter**". Clearly a Solicitor's Opinion interpreting the judicial chapter, 1303-MLC-4, is not an opinion involving the GLIFWC chapter 1092-MLC-25. Therefore that section used as a basis for finding jurisdiction in this matter is misplaced. Again I pointed out the issue is **original jurisdiction, not subject matter jurisdiction**. This is a basis for a rehearing

The next issue is that there is not a case or controversy before the Court of Central Jurisdiction. There has not been a case filed in the District Court or the Court of Appeals and there are no parties. In the Court's Opinion, Section III on advisory opinions the Court defines what an advisory opinion is and says it is not issuing one. The Court stated:

Since, an opinion issued by this Court pursuant to Band Statute 1142-MLC-3 § 23 will have binding effect on the parties it cannot be considered an advisory opinion.

The issue for purposes of a rehearing is that there are not any parties in this matter and the court is referring to one. In fact this case could be more appropriately captioned Court of Appeals v. Solicitor General. In deciding that there is jurisdiction for the court to hear this case the court indicates that it need not reach the issue of whether there is a case in law or equity and says it has the authority to hear this matter. Again it is not disputed that the Court of Appeals has the authority to review a Solicitor's Opinion. However, it takes a case or controversy with real parties with a real dispute to get this before the Court of Appeals.

The court misquotes and relies upon the misquote of 1303-MLC-4 § 8 which actually says:

Except as otherwise provided for by law the Court of Central Jurisdiction shall have all judicial authority extending to cases in law and equity.

The Court's misquote says, "Except as otherwise provided by [sic] law ..." The misquote can lead one to believe that this section is something other than a recognition of the limitations on the authority of the Court of Central Jurisdiction. The "except as otherwise provided for by law ..." reflects that the Court of Central Jurisdiction is a court of **limited jurisdiction**. In fact Congress has limited the Court's authority by the Indian Civil

Rights Act, 25 U.S.C. 1301 et seq. which limits the maximum fine a tribal court may impose and limits the amount of jail time a tribal court may impose. It also reflects the Band's lack of criminal jurisdiction over non-Indians and many other limitations. It also reflects the Band's own limitations on the Court. The big limitation is that the court only has authority to decide real cases. Here there are not real parties and there is not a real case. This matter is a complete fiction that is better left to discussions over lunch. This issue must be reached before this matter can proceed. This is another basis for a rehearing.

The next issue is that of Court Order No. 006, if it is assumed that it is a lawful and valid order. The Court invoked this rule to review the Solicitor's Opinion. However, in invoking this rule the court must follow the procedures within the rule that it made for itself. In Rule No. 2 the court made procedure for the review of a Solicitor's Opinion. Rule No. 2 says:

The Court of Central Jurisdiction shall review all opinions of the Solicitor General during the session of the Court in which said opinion was rendered. Should the Court fail to review any opinion, it shall have the authority to postpone and transfer action until the next session of the Court. No further postponements or transfers can occur without civil litigation being commencement [sic].

The Court avoids the issue of whether or not it may procedurally review the Solicitor's Opinion when it did not do so during the session it was issued and it did not transfer the matter to the next session. The Court does this by indicating this is a procedural issue which has nothing to do with subject matter jurisdiction. Again I point out the Solicitor General agrees that the Court of Appeals has subject matter jurisdiction and the original jurisdiction issue is much more related to procedure.

The Court's opinion disregards the procedural aspect of how to review a Solicitor's Opinion. I submit that the Court can not harmonize the procedures of Rule No. 2 with the review of the Solicitor's Opinion that is proceeding. Accordingly, the Court of Appeals must follow it's own procedures and wait for civil litigation to commence (a case in law or equity). This is a basis for rehearing.

Court Order No. 006 and this proceeding violate separation of powers principles embodied in Band Statute. This is a Court made order (like a statute passed legislatively) whereby it gave itself the authority to review, at its own initiative, the acts of the Executive Branch. There are checks and balances present to curtail the other branches of government. The court created a way of usurping powers it does not have and a way of second guessing the other branches of government with this court order and is now invoking this rule by itself and sitting as a tribunal deciding whether the court is right, and whether the executive branch is right and making a rule like the legislative branch to do so. This

entire proceeding is extraordinarily wrong and is the basis for a rehearing.

The next issue is that of the justices presiding over this matter. Three of these justices sat as special magistrates pursuant to the Solicitor's Opinion and must recuse themselves from this matter. Associate Justice Ruth Sam, Associate Justice Bonita Nayquonabe, and Associate Justice Rosalie Noonday. They have a direct interest in the outcome of this matter and should not be involved in it as Appellate Court Justices. Also the Associate Justice Natalie Weyaus should recuse herself. Her impartiality is easily questionable, after all she was not present at the initial hearing. Additionally she created a crisis in the court when she as Chief Justice refused to enlist Special Magistrates to hear cases and then demanded a Solicitor's Opinion before allowing any proceedings in court. Justice Weyaus may also be perceived as having a bias against the Solicitor General's Office in that she has been prosecuted a number of times by the Solicitor General. She also had a significant decrease in pay as a result of the passage of 1303-MLC-4 and anyone associated with said passage. This is another reason for a rehearing.

Finally the issue of the legality of the Solicitor's Opinion is moot because there are District Court Judges in place. This is another basis for a rehearing.

Dated

10/13/95

David Christensen

David Christensen
Deputy Solicitor General
HCR 67 Box 194
Onamia, MN 56359

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

IN THE COURT OF CENTRAL JURISDICTION
COURT OF APPEALS

IN THE MATTER OF:

Case No. 95-CV-0278

THE LEGALITY REVIEW OF THE OPINION
OF THE SOLICITOR GENERAL.

OPINION No. 95-01

ORDER REGARDING THE
SOLICITOR GENERAL'S
PETITION FOR REHEARING

The petition is **denied**. The Solicitor General is hereby put
on notice that a Hearing on the merits of this case will be held on
October 27, 1995 at 3:00 PM at the Justice Center.

IT IS SO ORDERED, ADJUDGED AND DECREED

Entered this 23 day of October 1995

SEAL OF COURT

Dorothy Sam Dorothy Sam

Natalie Y. Weyaus

Ruth Sam Ruth Sam

Bonita Y. Nayquonabe Bonita Nayquonabe

Rosalie Noonday Rosalie Noonday

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

IN THE COURT OF CENTRAL JURISDICTION
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IN THE MATTER OF:

Case No. 95-CV-0278

THE LEGALITY REVIEW OF THE OPINION
OF THE SOLICITOR GENERAL.

OPINION No. 95-01

DISMISSAL ORDER

A hearing on the above entitled matter was held on October 27, 1995 at the Justice Center. The Solicitor General asserts that Opinion No. 95-01 was only in effect during the period of time between the passage of the new judicial code and the hiring of District Court Judges. The Court accepts the Solicitor Generals assertion. Since, Opinion No. 95-01 no longer has the legal force of law, review of Opinion No. 95-01 would be moot. Therefore, the Court hereby **DISMISSES** the legality review of Opinion No. 95-01.

Entered this 3rd day of November 1995

SEAL OF COURT

Dorothy Sam Dorothy Sam
Ruth Sam Ruth Sam
Bonita H. Nayquonabe Bonita Nayquonabe
Rosalie Noonday Rosalie Noonday