



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

RESOLUTION 20-01-22-22

**A RESOLUTION REQUESTING AN OPINION OF THE SOLICITOR
GENERAL REGARDING THE POWERS OF THE ASSISTANT
COMMISSIONER OF ADMINISTRATION**

- WHEREAS, the Mille Lacs Band Assembly (“Band Assembly”) is the duly elected legislative body of the Non-Removable Mille Lacs Band of Ojibwe (“Band”), a federally recognized Indian Tribe; and
- WHEREAS, pursuant to 3 MLBS § 3(d), the Band Assembly is empowered to adopt resolutions; and
- WHEREAS, pursuant to 4 MLBS § 18(d), the Band’s Solicitor General is obligated to “interpret all laws and executive, legislative, secretarial and commissioner’s orders and policies on behalf of the [Band]” and “[a]ll said interpretations shall be titled in the form of Opinion of the Solicitor General, be consecutively numbered, dated as to the date of issuance, and contain the official seal of the Band[;]” and
- WHEREAS, pursuant to 4 MLBS § 18(f), the Solicitor General is obligated to “advise and assist the Chief Executive, the Band Assembly or the Court of Central Jurisdiction in the achievement of a clear, faithful, and coherent expression of the laws and policies of the [Band] as prescribed by the standards of the office of Solicitor General in 4 MLBS § 19[;]”
- WHEREAS, in the absence of the Commissioner of Administration, Assistant Commissioner of Administration Maria Costello (“the Assistant Commissioner”) has issued eight (8) separate Commissioner’s Orders citing 4 MLBS §§ 7(h) and 9(a) as their sources of authority; and
- WHEREAS, the Band Assembly does not dispute that 4 MLBS § 7(h) gives to the Assistant Commissioner the authority to issue commissioner’s orders because pursuant to 4 MLBS § 4 the Assistant Commissioner is an executive officer; and
- WHEREAS, pursuant to 4 MLBS § 9(a), the other source of authority cited by the Assistant Commissioner, if “the Administration Policy Board is unable to perform its duties due to lack of quorum, **the Commissioner of Administration** may issue a commissioner’s order to implement any said matter” (emphasis added); and
- WHEREAS, the Assistant Commissioner of Administration is not the Commissioner of Administration; and

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contained herein or in 4 MLBS § 7 during the absence of the Commissioner of Administration[;]” and

WHEREAS, the commission of Commissioner of Administration Peter Nayquonabe was suspended indefinitely by the Joint Session of the Band Assembly; and

WHEREAS, to the best of the knowledge of the Legislative Branch, Commissioner Nayquonabe did not expressly delegate to the Assistant Commissioner any of the Commissioner of Administration’s authorities prior to the suspension of his commission; and

WHEREAS, the Band Assembly requires a binding interpretation of the law in order to determine whether, in the course of its statutory duties, to annul any similar future orders from the Assistant Commissioner on the basis that the Assistant Commissioner lacks the authority to issue said orders; and

WHEREAS, regardless of whether an express delegation occurred in this circumstance, said binding interpretation will prove invaluable to Band government if similar circumstances regarding the absence or lack of a Commissioner of Administration occur in the future.

NOW, THEREFORE, BE IT RESOLVED, that the Band Assembly hereby requests that the Solicitor General complete and submit an Opinion of the Solicitor General to the Clerk of the Band Assembly **no later than 5:00 PM on Sunday, May 1, 2022**, providing thorough legal analysis of the following questions:

- (1) Under 4 MBLB § 7 or 4 MLBS § 10, do the powers of the Commissioner of Administration devolve automatically to the Assistant Commissioner of Administration when the commission of the Commissioner of Administration has been suspended by the Joint Session?
- (2) Under 4 MLBS § 7 or 4 MLBS § 10, do the powers of the Commissioner of Administration devolve to the Assistant Commissioner of Administration in any other circumstance, apart from express delegation?
- (3) Under 4 MLBS § 6 or 4 MLBS § 7(k), does the Chief Executive have the authority to delegate to the Assistant Commissioner of Administration the authorities of the Commissioner of Administration when said power of delegation is given expressly to the Commissioner of Administration?
- (4) Under 4 MLBS § 10(g), does the term “herein” refer to the language of § 10 or the language of Title 4 when the subsection specifically cites 4 MLBS § 7 as one permissible source of authority outside of § 10, giving a presumption that the use of “herein” refers solely to § 10 itself?
- (5) Under 4 MLBS § 9(b), and giving due consideration to the answer to question (4), does the Assistant Commissioner of Administration have the authority to chair the Administration

- (5) Under 4 MLBS § 9(b), and giving due consideration to the answer to question (4), does the Assistant Commissioner of Administration have the authority to chair the Administration Policy Board when said authority is expressly assigned to the Commissioner of Administration?

WE DO HEREBY CERTIFY that the foregoing resolution was duly concurred with and adopted at a regular session of the Band Assembly, in Legislative Council assembled, a quorum of legislators being present, held on the 27th day of April, 2022, at Nayahshing, Minnesota, by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

IN WITNESS WHEREOF, we, the Band Assembly, hereunto cause to have set the signature of the Speaker of the Assembly.

OFFICIAL SEAL OF THE BAND




Sheldon Boyd, Speaker of Assembly