



THE MILLE LACS BAND OF  
**OJIBWE INDIANS**

**ORIGINAL**

*Executive Branch of Tribal Government*

**SOLICITOR'S OPINION 00-23**

On December 9, 2000, the Solicitor General received written communication from the Speaker of the Band Assembly requesting, on the Band Assembly's behalf, an Opinion of the Solicitor General concerning the necessity for annual ratification of changes made to the Band's Personnel Policy Manual.

**Relevant Statute**

**§4 Duration**

This manual must be reauthorized on an annual basis to coincide with the Band's fiscal year. The Commissioner of Administration shall recommend any changes of this manual to the Chief Executive no later than sixty (60) calendar days prior to the commencement of the Band's fiscal year. The Chief Executive's annual recommendation is subject to Band Assembly ratification.

**§5 Amendments**

The Administration Policy Board fully reserves the right to alter, amend, or repeal the several provisions of these Policies, subject to the ratification of the Band Assembly. The Commissioner of Administration shall notice [sic] the Speaker of the Assembly within two weeks of the proposed amendment.

6 MLBSA §§4, 5

**Question Presented**

Must the Band Assembly ratify changes in the "Personnel Policy Manual" on an annual basis?

**Brief Answer**

The question is moot as the Personnel Policy Manual's sunset provision has been effected, causing Chapter 1 of Title 6 of Mille Lacs Band Statutes Annotated to be repealed by its own terms.

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## Discussion

The Personnel Policy Manual (“PPM”), located at 6 MLBSA §§1-301, is a strange creature indeed, being equal parts employee handbook and civil service statute, with regulations on the lease of restricted lands from the Mille Lacs Band (6 MLBSA §11) included, presumably, for variety.

The statutes relating to the question presented are unusually straightforward. There is little room for semantic analysis in the relevant language:<sup>1</sup> “This manual must be reauthorized on an annual basis.... The Chief Executive’s annual recommendation is subject to Band Assembly ratification.... The Commissioner of Administration shall notice [sic] the Speaker of the Assembly within two weeks of the proposed amendment.” 6 MLBSA §§4, 5.

It is, of course, the first sentence of 6 MLBSA §4 that presents the threshold question. By its own provisions, the PPM requires annual reauthorization. The PPM is comprised of Sections 1-301 of Title 6 of the Mille Lacs Band Statutes. See, 6 MLBSA Ch. 1, *contents*. Without annual reauthorization, the entirety of 6 MLBSA Ch. 1 ceases to exist.

No such authorization has taken place.

Pursuant to *Opinion of the Solicitor General 00-22*, as well as In the Matter of the Interpretation of the Solicitor General 15-OSG-92, p. 8 (Ct. Central J. 1993), the legality of the sunset clause should also be addressed. Following *Opinion of the Solicitor General 00-22*, the standard for conducting this type of analysis is detailed at Nixon v. Administrator of General Services, 433 U.S. 425 (1977). Although federal caselaw does not control here, Nixon provides a useful and relevant framework for analyzing the Band’s Separation of Powers government. The analysis is as follows:

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<sup>1</sup> The fact that the statutes are contradictory does not make the language itself unclear, only the intent.

Rather, in determining whether [a law] disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents [one branch] from accomplishing its...assigned functions. Only where the potential for disruption is present must we then determine whether that impact is justified by an overriding need to promote objectives within the...authority of [another branch].

Nixon, supra, 433 U.S. at 442-43.

Under this framework, the Solicitor sees no violation of Separation of Powers, nor of any other valid statutory provision, by the use of a “sunset provision” on any valid legislation. While not specifically allowed or disallowed by Band statutes, “sunset provisions” are common in legislative bodies throughout the country. See, e.g., Minn. Revisor’s Manual, Ch. 4, Sec. 7(e), Off. Rev. Stat. 1997, Oregon Form and Style Manual, Ch. 3, p. 19 (1997). They can be a particularly useful tool for creating statutes designed to address a problem of limited duration, as well as to “try out” a new law to see if it accomplishes its goals in the manner designed. There is nothing inherent in a “sunset provision” which would violate Separation of Powers.<sup>2</sup>

Given the plain meaning of the statute, the fact that the PPM has not been reauthorized, as well as the verification of the propriety of sunset clauses in general, there can be no question that the PPM no longer exists. Thus, the question presented to the Solicitor is moot and cannot be answered.

As an aside, the Solicitor notes that the PPM in its previously-existing form was fraught with ambiguity, unwieldiness, and possible violations of Separation of Powers. The Solicitor encourages the Band Assembly to take this opportunity to adopt a full-scale revision of Title 6 and create a civil service act that adequately addresses the concerns of the Band while affording due process and equal protection to all Band employees.

Dated this \_\_\_ day of \_\_\_\_\_, 2000.



Adam Altman, Solicitor General

<sup>2</sup> Though any particular such provision may, of course, create such a violation.



THE MILLE LACS BAND OF  
OJIBWE INDIANS

Legislative Branch of Tribal Government

Rec At  
12-9-99

December 6, 1999

Adam Altman, Solicitor General  
Mille Lacs Band of Ojibwe  
HCR 67 Box 194  
Onamia, MN 56359

Re: Request for a Solicitor's Opinion

Dear Mr. Altman,

Pursuant to 3 MLBSA § 29, I on behalf of the Band Assembly am requesting a Solicitor's Opinion regarding legislative authority outlined in Band statutes. The question is whether or not the Band Assembly is required by Band Statute to ratify changes in the "Personnel Policy Manual" on an annual basis?

Very truly yours,

Herb Weyaus  
Speaker of the Assembly

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**THE MILLE LACS BAND OF**  
**OJIBWE INDIANS**

Legislative Branch of Tribal Government

May 15, 2000

G- Pa  
Sol. op. file

To: Marge Anderson, Chief Executive  
Adam Altman, Solicitor General

From: Herb Weyaus, Speaker of the Assembly *HW*

Re: Notice of intent to annul Solicitor's Opinion 00-22  
and Solicitor's Opinion 00-23

Notice is hereby given of the intent to annul Solicitor's Opinion 00-22 and Solicitor's Opinion 00-23 according to 3 MLBSA §17. A hearing is scheduled in the Band Assembly Chambers on May 16, 2000 at 2:30 p.m.

HW/ct

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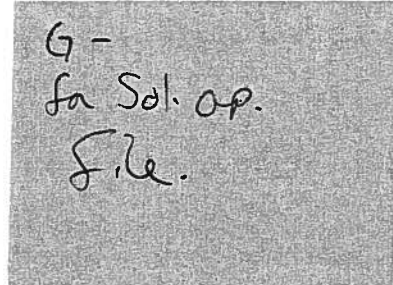


THE MILLE LACS BAND OF  
OJIBWE INDIANS

Legislative Branch of Tribal Government

May 16, 2000

Adam Altman  
Solicitor General  
Mille Lacs Band of Ojibwe  
43408 Oodena Drive  
Onamia, MN 56359



Dear Mr. Altman:

Pursuant to 3MLBSA §17 Band Assembly held a hearing May 16, 2000 in the Band Assembly Chambers to review the intent to annul Solicitor's Opinion 00-22 and Solicitor's Opinion 00-23. At the hearing a motion was made, seconded and unanimously approved by the Band Assembly to annul Solicitor's Opinion 00-22 and Solicitor's Opinion 00-23.

A Legislative Order will be issued addressing the Solicitor's Opinion 00-22 and Solicitor's Opinion 00-23.

If you have any questions feel free to contact me.

Sincerely,

*Herb Weyaus / Sylvia Villakusan*

Herb Weyaus  
Speaker of the Assembly

HW/ct

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