



*MILLE LACS BAND OF CHIPPEWA INDIANS*  
*Judicial Branch of Tribal Government*

Opinion of the Solicitor General

13-05G-84

TO: Douglas Sam, Secretary of Treasury  
Bette Sam, Senior Accountant - Office of Management and Budget:  
Management Section

FROM: Jay Kanassatega, Solicitor General

SUBJECT: Trust Fund Accounts of the BAND

You have requested an opinion whether the trust fund accounts of the Band are protected accounts of the government and therefore restricted to special appropriation and handling or can funds in this account be utilized for payroll and other general type expenditures. The following is submitted as a binding opinion pursuant to Band Statute 1024-MLC-3, Section 19.01.

It should be understood at the outset, that there is no legislation by the Band Assembly at hand expressly authorizing the creation, maintenance or distribution of trust funds. Additionally, there exists no Secretarial Orders with regard to trust funds. What does exist is a general understanding of the purpose of the trust fund and from that emanates the maintenance and distribution formulas which the Office of Management and Budget must enforce. On May 28, 1982, the authority for the creation of the trust fund {Ne-ia-shing Clinic Trust Fund Account} came from the Mille Lacs Reservation Business Committee under the power grant found in Article VI, Section 1 {b}, of the Constitution of the Minnesota Chippewa Tribe which states,

"To administer any funds within the control of the Reservation; to make expenditures from Reservation funds for salaries, expenses of Reservation officials, employment or other Reservation purposes. All expenditures of Reservation funds under the control of the Reservation Business Committee shall be accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. The Business Committee shall prepare annual budgets requesting advancements to the control of the Reservation of tribal funds under the control of the Tribal Executive Committee."

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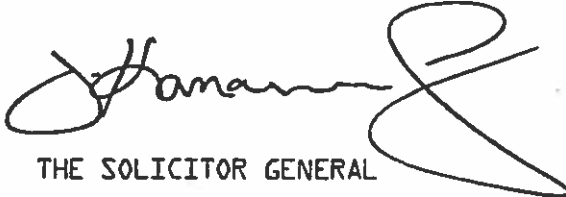
I am not convinced that the drafters of the Constitution specifically intended that this section be applicable to trust fund accounts, but rather to what is commonly known today as programmatic, corporate or general revenues of the Band. Secondly, this belief is strengthened by virtue of the Secretary of Interior's authority to deal with 'restricted fund accounts' which arise primarily from two sources, 1) proceeds, including income from lands allotted in severalty to the Indians, and 2) tribal funds individualized by per capita distributions to the Indians. Therefore, if such authority exists, and I believe it does, it can only be founded in the general statutes of the Band to provide an answer to your question absent specific language in Band Statutes or Secretarial promulgation of orders which deal with this matter.

Restricted funds of this type (subject to strict governmental control and supervision), as differentiated from other funds of the Band are directly in the hands of and under the control of the Secretary of Treasury pursuant to Band Statute 1001-MLC-1, Section 6. Specifically, "The Secretary of Treasury shall superintend and manage the fiscal concerns as required under Article VI, Section 1 of the Revised Constitution and By-Laws of the Minnesota Chippewa Tribe." Although this section additionally states that, "He shall receive and receipt for all monies paid into the Band treasury and safely keep the same until lawfully disbursed by the Band Assembly's appropriation," it also confers upon him the power to "levy, impound and attach any account of the Band for just cause." This, at first hand look appears to be conflictory, but in reality no conflict exists because a proposed unlawful expenditures that has been appropriated by the Band Assembly remains illegal if the expenditure's purpose is exterior to previously established exterior rule, regulation or law. Thus, a balance of power is created with a concurrent responsibility to comply with the lawful use of these funds. This, as well as the lack of specific statutory language of the Band Assembly indicates that the Secretary of Treasury stands largely in a capacity of a quasi or defacto guardian in the administrative/governmental protection of restricted accounts.

My review of available Reservation Business Committee minutes found one authorization of a payroll-related matter dated May 28, 1982. I do not believe this establishes precedence for the continued use of a restricted account for payroll purposes. If such an account were to be routinely authorized for payroll to a person to whom payment has been promised or a clear intent was established with regard to remuneration for services rendered, then the "restrictedness" of this account has been weakened. Additionally, I found no federal tax number has been authorized or procured for this type of account which leads me to believe the Reservation Business Committee at that time never intended the routine use of this account for this purpose. Therefore, it is my opinion that this type of expenditure violates the nature of a restricted-trust account and would be prohibited.

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With regard to other unspecified expenditures, this matter is not free from difficulty due to lack of promulgation of administrative law which regulates expenditures by the Secretary of Treasury. However, I am of the opinion under the present circumstances, that the funds in question can be properly regarded as subject to strict governmental supervision and control and within the exterior perimeter of the authority of the Secretary of Treasury. I strongly urge his development of rules and regulations for the expenditure of restricted-trust funds in fulfillment of his statutorily mandated guardianship function. The foregoing opinion shall be legally binding unless annulled by the Court of Central Jurisdiction or amended by the Band Assembly. Should you require further information, feel free to contact me.



THE SOLICITOR GENERAL

DATED at Vineland this 9th day of January, 1984.

OFFICIAL SEAL OF THE BAND