



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

Opinion of the Solicitor General

11-OSG-84

TO: Lon Burr, Commissioner of Education

FROM: Jay Kanassatega, Solicitor General

SUBJECT: An opinion regarding resignation status of contract personnel at Nay-Ah-Shing School.

You have requested an opinion concerning the status of contracted personnel who verbally resign their positions with the Consolidated Nay-Ah-Shing School Board and other related matters. This opinion is prepared to satisfy the present inquiry into this matter.

Question No. 1: The person did not return back to work for three {3} days, is she to have deemed to have resigned?

Response No. 1: An individual has been employed with the Consolidated Nay-Ah-Shing School Board under terms of a contractual agreement entered into on August 23, 1983. Due to the enactment of Band Statute 1040-MLC-18, Consolidated Nay-Ah-Shing School Board on August 15, 1983, all contracts need to be ratified by the School Board to have any force and effect. If the School Board does not act within a reasonable period of time on matters involving contract ratification, it can be legally presumed that the terms of the contract are not acceptable. Generally, contract employees are not bound by the Personnel Policies of the Band because a special relationship has been established through terms of the contract. The present contract also mandates a teacher's consent to changes or modifications which are proposed by Board party. As a result of the contract's lack of abandonment language, the Board would be precluded from exercising a three day abandonment clause for invoking a resignation option. Therefore, the contract employee involved can not legally deemed to have resigned the position without formal School Board consent and acceptance of a verbal or written notification by the concerned individuals or upon the Commissioner's initiative.

Question No. 2: The School Board after reviewing the incident stated they would like to have the person back on board, do we have to advertise the position?

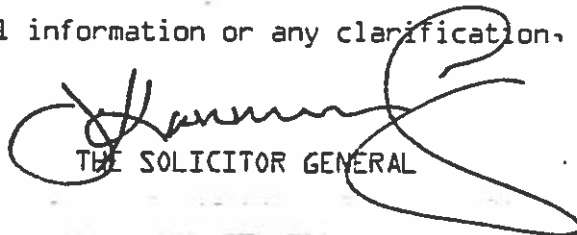
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Response No. 2: The School Board has the authority through Band Statute 1040-MLC-18, Section 2, Sub-section 7 to employ and terminate employees subject to personnel policies adopted by the School Board. The Board's adoption of policies in matters of this type constitute a legal obligation to advertise open positions and fairly and impartially employ the most qualified person. The School Board must decide this question because the issue turns-on the answer to the question of is this position considered by the Band and/or the public-at-large to be open to any applicant or is it considered that the contracted individual was placed on leave of absence status by the Commissioner or principal of the School after the incident occurred.

Question No. 3: If she was reinstated would there be any back pay coming to that person?

Response No. 3: The contract provides that the School Board agrees to pay said teacher the amount of ten thousand four hundred dollars {~~\$10,400.00~~} for basic services rendered. If such services were rendered during an interim period of time, then compensation is forthcoming.

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

  
THE SOLICITOR GENERAL

DATED at Vernalnd, Minnesota this 16th day of November, 1983.

OFFICIAL SEAL OF THE BAND