



THE MILLE LACS BAND OF  
**OJIBWE INDIANS**

*Office of the Solicitor General*

Solicitor's Opinion 29-04

*Annulment  
dated 1-13-05*

On November 19, 2004, the Office of Solicitor General received a request for a Solicitor's Opinion from Herb Weyaus, Secretary Treasurer regarding a separation of powers question.

**QUESTIONS PRESENTED**

You presented substantially three questions concerning the separation of powers between the executive and legislative branches, and a fourth question about requiring a bond for two employees before they receive confidential financial information about Band investments.

**FACTS**

Through an Executive Order, the Chief Executive has formed an Investment Advisory Committee and Drafting Subcommittee to help her develop the Band's financial investment expertise and to review the Band's investment strategy.

**Question 1**

Does the Chief Executive violate the separation of powers by forming the Investment Advisory Committee?

**Opinion**

No.

Pursuant to 4 MLBSA § 6(e), the Chief Executive may issue an executive order on any subject matter within the Executive Branch of government. Under Band Statute, the Chief Executive is also the custodian of all Band property. 4 MLBSA § 6(f). All Band property includes tangible and intangible property. Tangible property has a physical form and existence. Blacks Law Dictionary (Second Pocket Ed. 2001) at 561. Intangible property lacks a physical existence. *Id.* Investment funds are a form of intangible property similar to bank accounts, stocks, and bonds. *Id.* at 561. Therefore, the Chief Executive does have authority to form an advisory group on the investment of Band funds, including long term savings.

**DISTRICT I**

43408 Oodena Dr. • Onamia, MN 56359  
(320) 532-4181 • Fax (320) 532-5800

**DISTRICT II**

Route 2 • Box 58 • McGregor, MN 55760  
(218) 768-3311 • Fax (218) 768-3903

**DISTRICT III**

Route 2 • Box 233-N • Sandstone, MN 55072  
(320) 384-6240 • Fax (320) 384-6190

## **Question 2**

Do the powers of the Chief Executive include authority over the Band's investment planning?

Yes.

### **Opinion**

"To accomplish a fair and just exercise of authorities conferred by the people in the Constitution, the authorities of government shall be balanced by dividing such authorities so that no one person or governmental entity shall have absolute power." 1 MLBSA § 3. To accomplish this division the government authority is divided into three entities: executive, legislative and judicial. 1 MLBSA § 4. Presently, the investment planning is performed exclusively by the Legislative branch. The Chief Executive's role is limited to requesting the appropriation of funds. Band Assembly appropriates the money. Once the funds have been appropriated, the Secretary Treasurer directs the Commissioner of Finance to invest the funds. Does this investment plan violate the Band's separation of powers? Unfortunately, Band Statutes are silent on the issue of investments. Neither executive nor legislative branch is expressly given authority over investment decisions. Therefore, neither branch should have absolute control over investment decisions. My opinion is that investment decisions must be made jointly between the executive and legislative branches, preferably by Band Statute. The doctrine of separation of powers also means that the respective branches may not usurp the authority of the other respective branches of government. Here the question is whether the Legislative branch is usurping the authority of the Executive? Under the current practice, Band Assembly has absolute authority to direct the Band's investments from revenues of the Band's gaming operations. Under the current practice, the Chief Executive plays no part in making investment decisions for the Band. Here, investment decisions are not joint decisions. Therefore, without providing some mechanism for the Chief Executive to review investment decisions, the Legislative branch is usurping Executive branch authority.

## **Question 3**

This Solicitor General's opinion does not answer Question 3. I believe I have answered the question in my discussion of Questions 1 & 2. Further, Legislative history is unavailable to answer this question. Likewise Band Assembly did not provide any legislative history or other references with their request.

**Question 4**

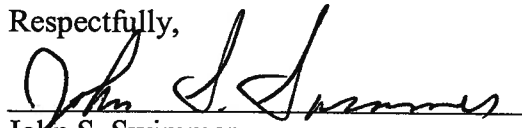
As I understand the question, you are asking whether the Secretary Treasurer can require bonding of employees.

Opinion

Yes.

The Secretary Treasurer has discretion to require bonding of employees before he provides confidential information to them. In this case, the two employees are not constitutionally or statutorily required to be bonded because they are not responsible for custody of tribal funds or property. The Secretary Treasurer, however, may take steps that he believes are reasonably necessary to protect the Band Assets. Here, the Secretary Treasurer wants to require bonding of two employees before disclosing Band financial information. Band financial information is confidential information. Therefore, the Secretary Treasurer may require bonding of the two employees.

Respectfully,

  
\_\_\_\_\_  
John S. Swimmer  
Solicitor General

Dated this 21<sup>th</sup> day of December, 2004.