



MILLE LACS BAND OF CHIPPEWA INDIANS
Judicial Branch of Tribal Government

Opinion of the Solicitor General

14-OSG-84

TO: Don Wedll, Commissioner of Natural Resources

FROM: Jay Kanassatega, Solicitor General

SUBJECT: Interpretation of Band Statute 1032-MLC-1, Section 29 and Implications for Executive Order 016.

You have requested an opinion regarding the relationship of the Department of Natural Resources to the Band's law enforcement officers. Inherent in this request is the question of how much authority, if any, is possessed by you, the Commissioner to direct activities of law enforcement personnel. Additionally, you inquire about the relationship of your department to law enforcement activities. The following is submitted as a binding opinion pursuant to Band Statute 1024-MLC-3, Section 19.01.

On June 30, 1983, the Chief executive signed into law Band Statute 1032-MLC-1 which created the position of Commissioner of Natural Resources and empowered lawful authority. Just previous to this date on June 9, 1983, the Chief Executive issued Executive Order 016 which withdrew authority of the Administration Policy Board to oversee operations of law enforcement personnel. These official acts bare primary to the issue at hand. My analysis will begin with the Executive Order.

The purpose of the Executive Order is two-fold and is contained in two sections of the "WHEREAS" clause.

"WHEREAS, the Band Assembly has not enacted any legislation regarding the independence of law enforcement operations or personnel from the direct influence of elected or appointed {emphasis added} officials of the Band."

"WHEREAS, in the interests of unbiased and unprejudicial enforcement of all laws of the Band for the benefit of all those under the jurisdiction of the Band."

As a result of the above concerns, the Chief Executive orderered, "the transfer of responsibility for day to day law enforcement operations and personnel to the Judicial Branch of tribal government."

Band Statute 1032-MLC-1, Section 29 was enacted three weeks to the day after the issuance of the Executive Order on June 30, 1983. This law contains the authority of the Commissioner of Natural Resources and specifically states, "The Commissioner shall not possess authority over law enforcement officials under the jurisdiction of the Band." However, the Band Assembly conferred other authorities to the Commissioner which include, "power of regulation over all matters of land, air, water, environmental protections and anything and everything related to the conservation and protection of natural resources. Additionally, the Commissioner possesses authority to do all things deemed by him as desirable in the preservation, protection and propagation in their natural state of all desirable species"

With the passage of Band Statute 1032-MLC-1, Section 29, the Band Assembly concurred with the intent of Executive Order 016 by specifically withholding any law enforcement jurisdiction from the Commissioner. The second matter ordered by the Chief Executive relates specifically to a grant of authority of a natural resource officer to possess authority to enforce all laws of the Band that do not primarily involve natural resource issues. The key words here seem to be 'law enforcement officials' as they appear in both the Executive Order and the written laws of the Statute. It is clear that the enforcement of natural resource laws is a component part of the overall law enforcement activities conducted by duly sworn officers of the Band. It is also clear that each Commissioner has been authorized to take such measures as are necessary to prevent any impending action which threatens the well-being of programs, legal system, natural resource, businesses and/or Band members (Band Statute 1001-MLC-1, Section 7). Finally, it is clear that the personnel who are employed to enforce the provisions of Band law, as well as all other employees or appointees of the Band are dependant upon the Executive Branch to request funding from the Legislative Branch to retain positions previously established (Band Statute 1028-MLC-1, Section 15 and Band Statute 1032-MLC-2, Section 15).

This last point is the clearest to offer a binding opinion so I will do so at this point. As a result of specific statutory language, it is my opinion that the Executive branch did not relinquish financial authority with the implementation of Executive Order 016. Therefore, a financial relationship exists between law enforcement personnel and the Band's Natural Resource Department, under present law. The fact that Executive Order 016 assigned responsibility for law enforcement operations to the Court of Central Jurisdiction does not alter the status of present law in reference to financial affairs.

Phase II

It is in Band Statute 1030-MLC-7, Section 30 that the relationship of a Natural Resource Officer to the enforcement of all laws of the Band is firmly established. Here a responsibility to all branches of government similar to that of the Solicitor General (Band Statute 1024-MLC-3, Section 18.02) surfaces. The responsibility of law enforcement officials is therefore inherent in their relationship to the Department of Natural Resources because they serve the Band as a single entity regardless of a separation of powers form of government. The perimeters of this relationship, however have yet to be firmly established and subsequently will be either by order of the Commissioner or order of the Court of Central Jurisdiction both, however in the absence of specific legislation. The test of legality will therefore arise through challenge of the Commissioner's Order after the fact since I may only interpret the written law of the Band. In this manner, an administrative body of law will develop which would be applicable to the administration of the three branches of government. Therefore, if the Commissioner of Natural Resources desires to direct some law enforcement activity, he must do so in a lawful manner (Commissioner's Order) and cite the specific statutory authority he is involving to accomplish the objective. In exercising the lawful authority of the office of Commissioner, there is a creation of responsibility to which law enforcement officials must respond. This however does not answer the question of your 'authority' over said officials which I will now address.

You seem to indicate in your letter of request for an opinion, that there is not statutory authority possessed by your office over law enforcement officials. Further, this authority has been conferred upon the Judicial branch of tribal government. The Court of Central Jurisdiction has not established through Court Order the relationship of law enforcement operations and personnel to this body. However, incumbent upon the transfer of operations is the intention of the act of the Chief Executive to protect these officials from political influences, bias, and prejudicial enforcement of law. The Band Assembly in my opinion concurred with the intentions of the Chief Executive by permitting the Executive Order to stand upon its own merit when it created the office of Commissioner of Natural Resources, and empowered you to act on behalf of the Band in matters involving natural resources. Since you are possessed of the authority to promulgate regulations over natural resource matters, it naturally follows that there would be extended some authority over law enforcement personnel because they enforce commissioner's law without exception.

Phase III

With regard to the operation and personnel of the law enforcement area, Executive Order 016 relinquished the Administration Policy Board's authority to involve themselves in matters of this type. This conclusion is found in the title of said Executive Order and I concur to this extent believing this to mean that the Court of Central Jurisdiction would screen applications for employment for example in the law enforcement area by utilizing the administrative body of law established for hiring procedures by the other two

branches of government. Additionally, the Court would be bound to secure funds for the operation of law enforcement through the Department of Natural Resources consistent with the appropriation process and the fact that you are legally responsible for the proper expenditure of funds under your jurisdiction as established by the Band Assembly. Other matters which concern the day-to-day operation of law enforcement should be addressed by the Court of Central Jurisdiction. Some operations matters have been settled by the Court for example, warrants for search and seizures {Court Order 009} and code of ethics {Court Order 001}.

Therefore, as a result of the aforementioned discussion, it is likely that you do possess some degree of authority over law enforcement officials of the Band especially in the area of promulgating regulations designed to fulfill the lawful mandates of your office. This authority could however only be exercised through the issuance of Commissioner's Order which if they involve matters exterior to the perimeters of your authority could be vetoed by the Band Assembly under provisions of Band Statute 1002-MLC-2, Section 14 or by the Court upon appeal or by other lawful means. Further, any such authority which is exercised is also limited to fulfilling the expressed intention of removing political influence, prejudicial or biased enforcement of natural resource laws of the Band.

With reference to matters of the operation of law enforcement activity, the Band Assembly did not confer specific authority. I believe this is the proper interpretation of the statutory language 'shall not possess authority over law enforcement officials' which is found in Band Statute 1032-MLC-7, Section 29 but general authority appears to exist. Such general authority is inherent in your responsibility to promulgate regulations governing the manner in which said natural resource laws shall be enforced for example in the mediation of disputes in cases involving citations issued to those who violate the peace and dignity of the Band's natural resource laws. It then naturally follows, that you possess authority to mediate natural resource disputes on behalf of the Band prior to Court action in compliance with the lawful desirability to preserve and protect the natural resources of the Band Statute 1032-MLC-7, Section 29. Other matters relating to the preservation, protection or propagation of the natural resource which do not directly involve enforcement activities, I find sufficient authority exists within the exterior perimeter of your lawful authority. As a result, you may direct any assistance of a natural resource officer as required through the issuance of Commissioner's Order to advance the state of the Band's natural resources.

Phase IV

For the reasons indicated, above, it is my opinion that the enactment of Band Statute 1032-MLC-7, Section 29 ratified the legal policy established by Executive Order 016 and did not relinquish Executive authority or responsibility over law enforcement activities. The Chief Executive is responsible for the faithful execution of all laws of the Band {Band Statute 1001-MLC-1, Section 5}. This authority can not be totally delegated by Executive Order but may be transferred in a limited manner. Additionally, each Commissioner

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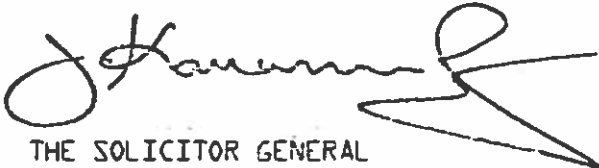
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is an appointee of the Chief Executive and as such shares in his lawful responsibility to faithfully execute all laws, judicial determinations and resolutions; and, as such accepts the 'limited transfer' of said authority on a subject-matter basis with his advice and consent {Band Statute 1032-MLC-1, Section 25}.

With regard to the authority and obligation of the Department of Natural Resources to the personnel duly sworn to uphold the laws of the Band, I conclude that no direct supervisory responsibility exists. However, an indirect relationship does exist if you are to fulfill the lawful mandates of the office to which you were appointed under conditions established herein. Additionally, law enforcement personnel are obligated to assist you in the performance of your duties as Commissioner just as they are obligated to the Band Assembly and the Court. In matters involving the financial affairs of your department, I find veto authority exists for any expenditure you deem inappropriate or unlawful since you are totally responsible for all funds under your administration separate from formal financial actions of the Administration Policy Board, in compliance with Executive Order 016.

The foregoing opinion shall be legally binding unless annulled by the Court of Central Jurisdiction or amended by the Band Assembly {Band Statute 1024-MLC-3, Section 19-01}. Should you require further clarification, feel free to contact me.



THE SOLICITOR GENERAL

DATED at Vineland this 18th day of May, 1984.

OFFICIAL SEAL OF THE BAND