



THE MILLE LACS BAND OF
OJIBWE INDIANS

Office of the Solicitor General

Solicitor General Opinion 33-06

COPY

Dear Secretary Treasurer Herb Weyaus:

You requested a Solicitor General's Opinion on the following question: Can the Chief Executive fire the Deputy Assistant without using the removal process outlined in 4 MLBSA § 15?

Short answer

Yes, the Chief Executive can fire the Deputy Assistant without using the removal process.

Discussion

Under Mille Lacs Band Statutes, the definition of Deputy Assistant states the Deputy serves the Chief Executive, has a status of senior executive staff, and may be removed for cause. The statute provides as follows:

(o-1) Deputy Assistant to the Chief Executive. Executive Assistant to the Chief Executive who serves with the Office of the Chief Executive. This position shall have a status equivalent to the senior executive personnel for fringe benefit purposes. Notwithstanding any other provisions to the contrary, the Deputy Assistant may be removed for cause as provided in section 15 of title 4 MLBSA. Duties for the position shall be defined in the position's job description.

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The Band Assembly, however, has stated that Chief Executive's staff serves at the pleasure of the Chief Executive, and gave the Chief Executive the ability to hire and fire her staff as follows:

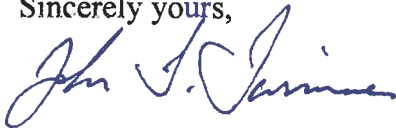
(z-1) Office of the Chief Executive. An office within the Executive Branch of Government staffed by persons who assist the Chief Executive in carrying out the position's duties. All employees of the office of the Chief Executive shall report to the Chief Executive. The Band Assembly hereby designates that staff positions with the Office of the Chief Executive shall be exempt from oversight by the Administration Policy Board. Any person employed in the Office of the Chief Executive shall serve at the pleasure of the Chief Executive. The Chief Executive is authorized to hire persons to serve in the Office of the Chief Executive notwithstanding any provision of any Band Statute providing for separate procedures for Hiring and Termination of employees of the Band.

To interpret these two provisions you must look at the intent of the Title 4 as a whole. When interpreting a statute, you will not look merely to a particular clause in which general words may be used, but will look at the whole statutes and policy of the law, as indicated by its various provisions. Kokoszka v. Belford, 417 U.S. 642, 650 (1974). These statutory provisions seem consistent with each other because the Deputy Assistant position is part of the Chief Executive's office. Nothing in the definition of the Deputy Assistant's position changes the fact that she serves at the pleasure of the Chief Executive. The recall provision in the Deputy Assistant definition, however, provides the Joint Session with a remedy to remove the Deputy Assistant; apart from the Chief Executive's ability to fire her.

Conclusion

The Chief Executive is vested with the authority to hire and fire her staff at her pleasure. The Deputy Assistant is part of the Chief Executive's staff. Although the definition of Deputy Assistant provides the Joint Session with the authority to recall the Deputy Assistant, this recall authority does not prohibit the Chief Executive from exercising her authority to fire her Deputy Assistant, if she so chooses.

Sincerely yours,

A handwritten signature in blue ink that reads "John S. Swimmer". The signature is written in a cursive style with a large initial "J".

John S. Swimmer
Solicitor General, Mille Lacs Band of Ojibwe



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

HAND DELIVERED TO SOLICITORS OFFICE
February 16, 2006

John Swimmer, Solicitor General
43408 Oodena Drive
Onamia, MN 56359

Dear Mr. Swimmer:

Pursuant to 3 MLBSA § 17, Band Assembly is hereby giving Notice of the intent to annul Solicitor's Opinion 33-06. Please contact our office to schedule a hearing within the next ten days.

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Herb Weyaus, sv

Herb Weyaus
Speaker of the Assembly

cc: file

Melanie Benjamin, Chief Executive
HW/smv

Feb 2

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