

THE MINNESOTA CHIPPEWA TRIBE
TRIBAL EXECUTIVE COMMITTEE

Special Meeting
December 14, 2017

The special meeting of the Minnesota Chippewa Tribe Tribal Executive Committee was called to order by President Kevin Dupuis at 10:04 a.m. at the InterContinental Hotel, St. Paul,, Minnesota

Invocation: Syngen Kanassatega

Roll Call: Kevin Dupuis, Chairman, Fond du Lac; Ferdinand Martineau, Secretary/Treasurer, Fond du Lac; Melanie Benjamin, Chief Executive, Mille Lacs; Carolyn Beaulieu, Secretary/Treasurer, Mille Lacs; Faron Jackson, Chairman, Leech Lake; Arthur LaRose, Secretary/Treasurer, Leech Lake; Terrance Tibbetts, Chairman, White Earth; Tara Mason, Secretary/Treasurer, White Earth; Catherine Chavers, Chairwoman, Bois Forte; David Morrison, Secretary/Treasurer, Bois Forte; Marie Spry, Committeewoman, Grand Portage;

Absent: Dennis Morrison, Secretary/Treasurer, Grand Portage.

Others: Gary Frazer, Executive Director, MCT; Phil Brodeen, Legal, MCT; Vanessa Northrup, Rep., Fond du Lac; Dale Green, Legal, Leech Lake; Tammy LaRose, Enrollment Coordinator, Leech Lake; Steven Clark, Rep., White Earth; Loran LaGue, White Earth; Syngen Kanassatega, Legal and Policy Counsel, Mille Lacs; Susan Klapel, Deputy Assistant, Mille Lacs; Shena Matrious, Government Affairs Area Relations/Special Projects, Mille Lacs; Emily Johnson, Strategic Initiatives Coordinator, Mille Lacs; Caryn Day, Legislative Communications, Mille Lacs; Shelly Day, Legislative Manager, Mille Lacs; MCT staff and other interested parties.

APPROVAL OF AGENDA: Dale Greene requested to be included under New Business to discuss MCT Interpretation 1309, and further requested minutes from MCT meeting when 1309 was deliberated.

Motion by Chairwoman Chavers to approve the agenda with additions. Seconded by Committeewoman Spry. 10 For, 0 Against, 0 Silent. Carried.

RESOLUTIONS:

Motion by Chief Executive Benjamin to approve the COLA Resolution 29-18. Seconded by Chairman Tibbetts.

Request from MCT member to see past thirty years of Treasurer's monthly reports and Secretary's reports.

Motion on the table: Chief Executive Benjamin to approve the COLA Resolution 29-18. Seconded by Chairman Tibbetts. 10 For, 0 Against, 0 Silent. Carried.

Motion by Secretary/Treasurer Beaulieu to approve the NCAI Resolution 30-18 with corrections. Seconded by Chairwoman Chavers.

Resolution would authorize the president to take necessary action for MCT to join NCAI as a Member Tribe; based on citizenry, MCT shall have 180 votes. Noted that Alternate should be Marie Spry versus Norman Deschempe through July, 2018; Gary will make the correction.

Motion on the table: To approve the NCAI Resolution 30-18 with corrections Secretary/Treasurer Beaulieu . Seconded by Chairwoman Chavers. 10 For, 0 Against, 0 Silent. Carried.

LIQUOR LICENSE:

Motion by Secretary/Treasurer Beaulieu to approve the Liquor License for Grand Casino-Mille Lacs. Seconded by Committeewoman Spry. 10 For, 0 Against, 0 Silent. Carried.

ELECTION ORDINANCE: Ad Hoc Committee met on October 21, 2017. Attorney Phil Brodeen presented Ad Hoc Committee's (AHC) proposed changes to the election ordinance, sent to TEC members on October 30 for review; no recommendations came back.

AHC Recommendation #1: First change proposed dealt with ordering of candidates on the ballot; Ad Hoc Committee recommended more random ordering due to research indicating candidates higher on the ballot may benefit from higher percentages in voting.

AHC Recommendation #2: Second recommendation is that the word "Incumbent" be printed next to name of person running for re-election in a random ordering of candidates.

DISCUSSION:

TEC members discussed the first two recommendations from the Ad Hoc election committee. On the topic of random ordering of candidates on the ballots, Archie Larose informed TEC that Leech Lake intends to pass a resolution requiring that incumbents be listed at top of ballot regardless of order in which they signed up. There was discussion about whether all Bands must conform to the same policy, whether this would be constitutionally allowable, and whether the recommendations of Ad Hoc Committee must be followed. Faron Jackson proposed approval of two options; (1) incumbents automatically listed at top of the ballot, or (2) the word incumbent be printed next to incumbents name but candidates be randomly ordered. Discussion about whether this should have been addressed by the Ad Hoc Committee rather than at the TEC, and whether an opt-in/opt-out option would impact the appellate level

of the MCT. Attorney Phil Brodeen noted the purpose of the recommended change was to get rid of the “race to the office to file”, but if the TEC wants each Band to have discretion the Election Ordinance should be left as-is. On topic of conformity, President Dupuis discussed conformity of how absentee ballot requests and proposed MCT handling all requests.

AHC Recommendation #3: Election Ordinance, Page 11, 1.7(A): Allowing that the band governing body can establish a work schedule sufficient for board members to fulfill its duties. Phil explained this grew out of discussion about what the work day entails and whether it is a full time job or just 8 hours. Some Bands with more members had busier election boards and some were done with their duties after 8 hours.

AHC recommendation #4: Election Ordinance, Page 14, 2.1(A)(1): Relates to removing language and adding language regarding automated balloting system. Recommendation is that the waiver language be removed, and language added allowing that Band elections may be conducted by using automatic tabulation of ballots. Phil explained that with this language, hand-counting when not using automated balloting system will meet the standards.

Discussion about whether all Band elections must be uniform, versus acknowledging one-size does not fit all, and suggestions that AHC work should be done in off-years versus right before an election. Questions raised regarding the role of the AHC’s work, whether options were discussed on each reservation, and Kevin Dupuis asked if any AHC members were in the room. 2 AHC members were present and stated their goal was make elections uniform for all and ensure no candidate had an unfair advantage, adding if TEC does not accept these recommendations, there is no point in having an AHC.

Motion by Secretary/Treasurer Beaulieu to approve the Election Ordinance with recommendations from the Ad hoc Committee. Seconded by Secretary/Treasurer Mason. 10 For, 0 Against, 0 Silent. Carried.

Motion by Chief Executive Benjamin to start the review of the Election Ordinance by Ad hoc Committee immediately following the Election process after new members are sworn in. Seconded by Secretary/Treasurer Dave Morrison. 10 For, 0 Against, 0 Silent. Carried.

ELECTION CALENDAR:

Executive Director Frazer explained that the election calendar is very similar to past few years; everything is ahead about a week due to challenges to certification; staff were hard pressed to get it to the appellate body. The Primary election is April 3, General Election June 12. Upon TEC approval would get out ASAP. White Earth Secretary/Treasurer Mason discussed Bois Forte request 2 months ago to use paper ballots via the previous opt-out language. Executive Director Frazer explained that with approval of changes to Election Ordinance the Bands no longer need to opt out of electronic ballot system. Secretary/Treasurer Mason also questioned

the ballot ordering and Executive Director Frazer replied that after certification, MCT orders ballots. Secretary/Treasurer Mason asked about whether criteria for background checks exists for certification; Executive Director Frazer responded that how background checks are conducted is up to each Band, election board training.

Secretary/Treasurer Mason expressed her opinion that each band should be uniform on this as well; that backgrounds will be done before any training occurs so if there is going to be discussion it needs to be done soon, for fairness. Attorney Brodeen offered that MCT can write a memo for guidance but it is still up to the individual reservation as to how they take it; Secretary/Treasurer Mason requests that staff be able to consult with Attorney Brodeen and MCT for training purposes. Leech Lake Chairman Jackson agreed with need for guidance and uniformity, discussed past problems at Leech Lake. Executive Director Frazer and President Dupuis discussed providing written guidance and offered to schedule meetings on each reservation; TEC members concurred that this was a good idea (no vote).

Motion by Chief Executive Benjamin to approve the Election Calendar for 2017-2018 Regular Election. Seconded by Chairwoman Chavers. 10 For, 0 Against, 0 Silent. Carried.

11:11 p.m. – 5 minute Break.

NEW BUSINESS: Dale Greene Jr.

Dale discussed eligibility of persons running for office under Ordinance 13-09, and read aloud Article IV, Section 4, stated he was making the presentation at request of Mille Lacs membership and questioned why there was a need to adopt Resolution 13-09 three years after Secretarial election. Addressed lack of uniformity in the certification process re: background checks and information collection; asked several questions: why 13-09 wasn't given to newly elected MCT and RBC officials in 2014; why did incumbent TEC officers run in 2016; who is responsible for disseminating TEC interpretations to newly elected officials. He believed it was Secretary's duty to make sure interpretations are available; believes Mille Lacs Band certification process was flawed due to background check not including Alford plea, which he believed is a guilty plea, which he states fits the definition of 13-09. States that Solicitor General cannot decide what is given or not given to the Certification committee. Requests that the Mille Lacs Band reconvene the 2016 certification process because he believes information was withheld.

MILLE LACS BAND ISSUE: Todd Matha, Solicitor General, Mille Lacs Band

Solicitor General Matha asked President Dupuis whether he wanted him to respond to Dale Greene's questions, and asks if that is the reason why Solicitor General Matha was asked to be present today. President Dupuis said that it's up to Solicitor General Matha whether he wished to respond. On the tribal court case, Solicitor General Matha explained that the former

Solicitor General Rjay Brunkow and defense counsel agreed in 2009 to stay the matter and agreed the case should be dealt with in state court; at the time former Solicitor General Brunkow stated in media this was done to avoid appearance of impropriety and to avoid conflicts of interest. Defendants are able to maintain their innocence; there are any number of reasons someone would agree to an Alford plea, such as wanting to get on with their lives, don't want hassle of a trial. Federal courts have recognized that Alford Plea can amount to a guilty plea, but key distinction in this State court case is that there was a stay of adjudication and case was dismissed without conviction, which makes it different from run-of-the-mill Alford Plea. There was dismissal in 2013 and no conviction to deem Chief Executive Benjamin ineligible per the requirements of Article X and Constitutional Interpretation 13-09; No conviction in any Federal or State databases. 2012 Band Assembly knew of state and tribal court cases and certified Chief Executive Benjamin to run for office. Certification was challenged by two candidates and went to MCT Election Court of Appeals. Case hadn't yet been dismissed by the State court but MCT Appeals Court found there was no conviction and Chief Executive Benjamin was eligible. Challenge anyone to show him a case where there was a dismissal of the case but the person was convicted. Four attorneys and one non-attorney on MCT Election Court of Appeals looked at all documents and concluded no conviction, Chief Executive Benjamin was eligible to run. Alford Plea entered in January 2012; certification occurred in February 2012. Joint Session decided to bring tribal court case back, Solicitor General Matha had a conflict because as attorney cannot sue your own client and Chief Executive Benjamin could become one of his clients in July, 2012, so he drew up contract with outside counsel David Lillehaug to pursue the case in tribal court. At meeting with 50-60 Band Members, Band Assembly declined to approve the outside counsel contract to pursue the case; remained open indefinitely. Heavily covered in media and the case was common knowledge. Case dismissed in state court in 2013. In 2014, composition of Band Assembly changed somewhat but there was continuity and knowledge of the case. During 2016 certification did not receive any questions from anyone asking about tribal court case even though one person on Band Assembly remained constant throughout and knowledge of case existed. Tribal court case in perpetual stay of adjudication. Then question of interpretation of Title IV and Title X, as X states mandatory removal from office if convicted of a felony in State, Federal or county court but no reference to Tribal Court.

President Dupuis disagreed, says the phrasing is "competent court"; are we telling ourselves that none of our Tribal Courts are competent. President Dupuis notes the first four causes for removal in Article X do not require a conviction. Greene spoke about certification being the responsibility of the Mille Lacs Band and his belief there was an admission of guilt; Solicitor General Matha addressed the requirements of a conviction under both the MCT Constitution and 13-09. MCT Attorney Brodeen discussed the previous MCT Appeals process when challenges to Chief Executive Benjamin's certification were made; notes the case was included with the Notice of Appeal by one of the challengers so the Court was aware of the case.

Questions/statements from the audience about Constitutional Interpretation 13-09 language stating “A conviction of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets or property of an Indian tribe or tribal organization shall include a conviction for an attempt to commit such a crime if the attempt is punishable as an offense under applicable law”. Attorney Brodeen responded that it still requires a conviction. Chief Executive Benjamin addressed the explanation she was provided at the time about an Alford Plea; she was told it means you acknowledge that a jury might convict you based on the evidence they are provided, but allows you to maintain your innocence; she stated she maintained her innocence consistently throughout the proceedings and never admitted guilt.

Secretary/Treasurer Beaulieu explained that she requested Solicitor General Matha come to provide an update on the Tribal court case and did not want to hash out what happened in state court; her role was to ensure the Tribal court case is being resolved, which Tribal Court has the authority to do; she stated that Solicitor General Matha was brought to address that and share next steps. Chief Executive Benjamin noted the Tribal Court date is December 19th at 10:00 a.m. and invited anyone to attend.

President Dupuis again addressed definition of “court of competent jurisdiction” and whether that includes an RBC, the TEC, or Tribal Courts, saying there does not need to be a crime; but something proven by the membership and the Band under Article X offenses goes to the petition process. He asked the TEC what the reasoning of 13-09 was, what the discussion was and asked what the minutes from that meeting say. Attorney Brodeen offered to provide a memo on criminal jurisdiction and explain what a “competent jurisdiction” means. Attorney Brodeen stated that he and Executive Director Frazer could look at the minutes and provide them to him.

SET TRIBAL EXECUTIVE COMMITTEE DATES:

Cass Lake, MN
Minnesota Chippewa Tribe Headquarters
Natural Resources
January 16, 2018 – 1:00 pm

Grand Portage
January 23, 2018 – afternoon – Subcommittee meetings
January 24, 2018 – Tribal Executive Committee meeting

Mille Lacs
Big Sandy
April 26, 2018 – Subcommittee meetings
April 27, 2018 – Tribal Executive Committee meeting

Bois Forte

Fortune Bay Resort Casino

July 9th – Tribal Executive Committee – recess until July 10th

July 9th – Subcommittee Meetings

July 10th – Tribal Executive Committee meeting

DISCUSSION: Open Senate Position. President Dupuis discussed his hope to see a Native person in this position one day but one has already been appointed. Chief Executive Benjamin spoke recently with Tina Smith, who was appointed to take Franken's seat and that Smith would be asking to sit on Franken's former committees; in conversation with Chief Executive Benjamin, Smith committed to working hard on behalf of Indian county.

INFORMATION:

White Earth Representative Clark informed the Committee that at the next Tribal Executive Committee meeting a resolution would be presented for censorship of Chairman Terrance Tibbetts in regard to theft from the Band and violating I-65.

Motion by Cathy Chavers to adjourn the meeting at 1:19 p.m. Seconded by Marie Spry. 10 For, 0 Against, 0 Silent. Carried.